AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 87 Thursday
No. 111 June 9, 2022

Pages 35067–35382

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 87 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 87, No. 111

Thursday, June 9, 2022

Agency for Healthcare Research and Quality
NOTICES
Meetings, 35214–35215

Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35153–35154

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2023 New York City Housing and Vacancy Survey, 35156–35157

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Committee on Immunization Practices, 35215–35216

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35216–35219

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Native Employment Works Plan Guidance and NEW Program Report, 35219–35220

Civil Rights Commission
NOTICES
Meetings:
Guam Advisory Committee, 35155–35156
Nebraska Advisory Committee, 35156
Virginia Advisory Committee, 35155

Coast Guard
RULES
Safety Zone:
Annual Fireworks Displays within the Captain of the Port Zone, Columbia River, 35092
Firework Display, Elizabeth River, Norfolk, VA, 35092–35094
Security Zone:
Parker Canyon, Pacific Palisades, CA, 35094–35096

Commerce Department
See Census Bureau
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Engineers Corps

Economic Development Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Workforce Data Collection Instrument, 35157–35158

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Test Procedure for Dehumidifiers, 35286–35315

Engineers Corps
NOTICES
Occupational Safety and Health Programs for Federal Employees, 35194–35195

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Ohio; Redesignation of the Ohio Portion of the Cincinnati, Ohio-Kentucky Area to Attainment of the 2015 Ozone Standard, 35104–35112
PROPOSED RULES
Clean Water Act:
Water Quality Certification Improvement, 35318–35381
NOTICES
Request for Information:
Development of Best Practices for Collection of Batteries to be Recycled and Voluntary Battery Labeling Guidelines, 35202–35208
Recycling Education and Outreach; Grant Program and Model Recycling Program Toolkit, 35197–35200
Solid Waste Infrastructure for Recycling Program, 35200–35202

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points:
Miami, FL, 35083–35088
PROPOSED RULES
Airspace Designations and Reporting Points:
Vicinity of Pawnee City, NE, 35133–35135
Airworthiness Directives:
Airbus SAS Airplanes, 35118–35122
Bombardier, Inc., Airplanes, 35125–35128
Dassault Aviation Airplanes, 35122–35125
De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes, 35128–35132
NOTICES
Airport Property:
Martha's Vineyard Airport, West Tisbury, MA, 35281–35282

Federal Communications Commission
NOTICES
90-Day Period to Submit Affirmation of Operational Status of Identified Earth Station Antennas to Avoid Losing Incumbent Status or File to Remove Identified Antennas from IBFS if No Longer Operational, 35208–35209
Meetings:
Informal Working Group–1, Informal Working Group–2, Informal Working Group–3, and Informal Working Group–4 of the World Radiocommunication Conference Advisory Committee, 35209–35212

Federal Emergency Management Agency
NOTICES
Flood Hazard Determinations, 35229–35240

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 35195–35197
Environmental Assessments; Availability, etc.:
Topsham Hydro Partners, LP, 35195

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Hours of Service of Drivers; Leland Schmitt, Jr., 35282–35283

Federal Trade Commission
NOTICES
Analysis of Agreement Containing Consent Orders:
Buckeye/Magellan, 35212–35214

Fish and Wildlife Service
PROPOSED RULES
2022–2023 Station-Specific Hunting and Sport Fishing Regulations, 35136–35152

Food Safety and Inspection Service
NOTICES
Elimination of Deadline for Partial Refunds of Overtime and Holiday Inspection Fees for Small and Very Small Establishments, 35154–35155

Foreign Assets Control Office
RULES
Cuban Assets Control Regulations, 35088–35091

Forest Service
RULES
Assessing Fees for Excess and Unauthorized Grazing, 35097–35104

Government Accountability Office
NOTICES
Request for Nominations:
Physician-Focused Payment Model Technical Advisory Committee, 35214

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
President's Council on Sports, Fitness and Nutrition, 35224–35225

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Maternal and Child Health Bureau Performance Measures for Discretionary Grant Information System, 35220–35223
Ryan White HIV/AIDS Program Part F AIDS Education and Training Center Program Evaluation Activities, 35223–35224

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Program Evaluation, 35158

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Tribal Enrollment Count, 35241–35242

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews, 35165–35178
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Magnesia Carbon Bricks from the People's Republic of China, 35161–35163
Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China, 35163–35164
Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China, 35158–35161
White Grape Juice Concentrate from Argentina, 35164–35165
Meetings:
Advisory Committee on Supply Chain Competitiveness, 35165

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Shingled Solar Modules, Components Thereof, and Methods for Manufacturing the Same, 35247–35248
Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea, 35246–35247

Justice Department
NOTICES
Proposed Consent Decree:
CERCLA, 35248–35249

Land Management Bureau
NOTICES
Requests for Nominations:
Sierra Front-Northern Great Basin and Mojave-Southern Great Basin Resource Advisory Councils, 35242–35243

National Archives and Records Administration
NOTICES
Records Schedules, 35249–35250

National Highway Traffic Safety Administration
NOTICES
Petition for Decision of Inconsequential Noncompliance:
Continental Tire the Americas, LLC, 35283–35284

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 35227–35228
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 35229
National Center for Advancing Translational Sciences, 35226
National Heart, Lung, and Blood Institute, 35225–35226
National Institute of Dental and Craniofacial Research, 35228–35229
National Institute of General Medical Sciences, 35225
National Institute on Aging, 35225

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2022, 35112–35117
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
West Coast Region Trawl Logbook Requirement, 35180
Endangered and Threatened Species:
Interim Report on Post-Delisting Monitoring of Nine Distinct Population Segments of Humpback Whales, Recovery Plan for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales, 35178–35179
Meetings:
U.S. Integrated Ocean Observing System Advisory Committee, 35193–35194
Takes of Marine Mammals Incidental to Specified Activities:
Chevron Point Orient Wharf Removal, 35180–35193

National Park Service
NOTICES
Inventory Completion:
Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM, 35244–35246
San Diego Museum of Man, San Diego, CA; Correction, 35243–35244

National Science Foundation
NOTICES
Antarctic Conservation Act Permit Applications, 35250

Postal Service
NOTICES
Product Change:
Parcel Select Negotiated Service Agreement, 35250

Presidential Documents
PROCLAMATIONS
Trade:
Solar Cells and Modules From Southeast Asia; Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation (Proc. 10414), 35067–35069
ADMINISTRATIVE ORDERS
Defense Production Act of 1950, Electrolyzers, Fuel Cells, and Platinum Group Metals; Presidential Determination Pursuant to Section 303 (Presidential Determination No. 2022–17 of June 6, 2022), 35075–35076
Defense Production Act of 1950, Presidential Determination on Electric Heat Pumps Pursuant to Section 303 (Presidential Determination No. 2022–18 of June 6, 2022), 35077–35078
Defense Production Act of 1950, Presidential Determination on Insulation Pursuant to Section 303 (Presidential Determination No. 2022–16), 35073–35074
Defense Production Act of 1950, Presidential Determination on Solar Photovoltaic Modules and Module Components Pursuant to Section 303 (Presidential Determination No. 2022–15 of June 6, 2022), 35071–35072
Defense Production Act of 1950, Transformers and Electric Power Grid Components; Presidential Determination Pursuant to Section 303 (Presidential Determination No. 2022–19 of June 6, 2022), 35079–35080
Foreign Assistance Act of 1961; Delegation of Authority Under Section 506(a)(1) (Memorandum of June 1, 2022), 35081

Science and Technology Policy Office
NOTICES
Advancing Privacy-Enhancing Technologies, 35250–35252

Securities and Exchange Commission
NOTICES
Application:
Voya Senior Income Fund, et al., 35280–35281
Joint Industry Plan:
Consolidated Audit Trail by BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., et al., 35273–35280
Order Approving Amendment No. 4 to the National Market System Plan for the Selection and Reservation of Securities Symbols Submitted by The Nasdaq Stock Market LLC, et al., 35270–35272
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Exchange, LLC, 35273
Cboe BYX Exchange, Inc., 35269–35270
Cboe BZX Exchange, Inc., 35272
MEMX, LLC, 35252–35269

State Department
NOTICES
Designation as Foreign Terrorist Organization:
al-Qa'ida in the Arabian Peninsula (and Other Aliases), 35281
Meetings:
Advisory Committee on International Law, 35281

Transportation Department
See Federal Aviation Administration

See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Treasury Department
See Foreign Assets Control Office

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Declaration of Financial Support, 35240–35241
Report of Medical Examination and Vaccination Record, 35241

Separate Parts In This Issue

Part II
Energy Department, 35286–35315

Part III
Environmental Protection Agency, 35318–35381

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
10414 35067

Administrative Orders:
Memorandums:
Memorandum of June 1, 2022 35081
Presidential Determinations:
No. 2022-15 of June 6, 2022 35071
No. 2022-16 of June 6, 2022 35073
No. 2022-17 of June 6, 2022 35075
No. 2022-18 of June 6, 2022 35077
No. 2022-19 of June 6, 2022 35079

10 CFR

Proposed Rules:
429 35286
430 35286

14 CFR
71 35083

Proposed Rules:
39 (4 documents) 35118, 35122, 35125, 35128
71 35133

31 CFR
515 35088

33 CFR
165 (3 documents) 35092, 35094

36 CFR
222 35097

40 CFR
52 35104
81 35104

Proposed Rules:
121 35318
122 35318
124 35318

50 CFR
648 35112

Proposed Rules:
32 35136

Federal Register
Vol. 87, No. 111
Thursday, June 9, 2022

Presidential Documents

Title 3—

The President

Proclamation 10414 of June 6, 2022

Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia

By the President of the United States of America

A Proclamation

Electricity is an essential part of modern life that powers homes, business, and industry. It is critical to the function of major sectors of the economy, including hospitals, schools, public transportation systems, and the defense industrial base. Even isolated interruptions in electric service can have catastrophic health and economic consequences. A robust and reliable electric power system is therefore not only a basic human necessity, but is also critical to national security and national defense.

Multiple factors are threatening the ability of the United States to provide sufficient electricity generation to serve expected customer demand. These factors include disruptions to energy markets caused by Russia's invasion of Ukraine and extreme weather events exacerbated by climate change. For example, in parts of the country, drought conditions coupled with heatwaves are simultaneously causing projected electricity supply shortfalls and record electricity demand. As a result, the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation have both warned of near-term electricity reliability concerns in their recent summer reliability assessments.

In order to ensure electric resource adequacy, utilities and grid operators must engage in advance planning to build new capacity now to serve expected customer demand. Solar energy is among the fastest growing sources of new electric generation in the United States. Utilities and grid operators are increasingly relying on new solar installations to ensure that there are sufficient resources on the grid to maintain reliable service. Additions of solar capacity and batteries were expected to account for over half of new electric sector capacity in 2022 and 2023. The unavailability of solar cells and modules jeopardizes those planned additions, which in turn threatens the availability of sufficient electricity generation capacity to serve expected customer demand. Electricity produced through solar energy is also critical to reducing our dependence on electricity produced by the burning of fossil fuels, which drives climate change. The Department of Defense has recognized climate change as a threat to our national security.

In recent years, the vast majority of solar modules installed in the United States were imported, with those from Southeast Asia making up approximately three-quarters of imported modules in 2020. Recently, however, the United States has been unable to import solar modules in sufficient quantities to ensure solar capacity additions necessary to achieve our climate and clean energy goals, ensure electricity grid resource adequacy, and help combat rising energy prices. This acute shortage of solar modules and module components has abruptly put at risk near-term solar capacity additions that could otherwise have the potential to help ensure the sufficiency of electricity generation to meet customer demand. Roughly half of the domestic deploy-

ment of solar modules that had been anticipated over the next year is currently in jeopardy as a result of insufficient supply. Across the country, solar projects are being postponed or canceled.

The Federal Government is working with the private sector to promote the expansion of domestic solar manufacturing capacity, including our capacity to manufacture modules and other inputs in the solar supply chain, but building that capacity will take time. Immediate action is needed to ensure in the interim that the United States has access to a sufficient supply of solar modules to assist in meeting our electricity generation needs.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including by section 318(a) of the Tariff Act of 1930, as amended, 19 U.S.C. 1318(a), do hereby declare an emergency to exist with respect to the threats to the availability of sufficient electricity generation capacity to meet expected customer demand. Pursuant to this declaration, I hereby direct as follows:

Section 1. *Emergency Authority.* (a) To provide additional authority to the Secretary of Commerce (Secretary) to respond to the emergency herein declared, the authority under section 1318(a) of title 19, United States Code, is invoked and made available, according to its terms, to the Secretary.

(b) To provide relief from the emergency, the Secretary shall consider taking appropriate action under section 1318(a) of title 19, United States Code, to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as the Secretary may prescribe, the importation, free of the collection of duties and estimated duties, if applicable, under sections 1671, 1673, 1675, and 1677j of title 19, United States Code, of certain solar cells and modules, exported from the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, and the Socialist Republic of Vietnam, and that are not already subject to an antidumping or countervailing duty order as of the date of this proclamation, and to temporarily extend during the course of the emergency the time therein prescribed for the performance of any act related to such imports.

(c) The Secretary shall consult with the Secretary of the Treasury and the Secretary of Homeland Security, or their designees, before exercising, as invoked and made available under this proclamation, any of the authorities set forth in section 1318(a) of title 19, United States Code.

Sec. 2. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

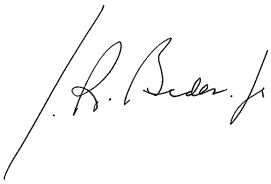
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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



[FR Doc. 2022–12578
Filed 6–8–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Presidential Determination No. 2022–15 of June 6, 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Solar Photovoltaic Modules and Module Components

Memorandum for the Secretary of Energy

Ensuring a robust, resilient, and sustainable domestic industrial base to meet the requirements of the clean energy economy is essential to our national security, a resilient energy sector, and the preservation of domestic critical infrastructure. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

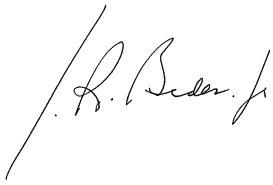
(1) solar photovoltaic modules and module components, including ingots, wafers, solar glass, and cells, are industrial resources, materials, or critical technology items essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for solar photovoltaic modules and module components is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for solar photovoltaic modules and module components.

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



THE WHITE HOUSE,
Washington, June 6, 2022

[FR Doc. 2022–12583
Filed 6–8–22; 8:45 am]
Billing code 6450–01–P

Presidential Documents

Presidential Determination No. 2022–16 of June 6, 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Insulation

Memorandum for the Secretary of Energy

Ensuring a robust, resilient, and sustainable domestic industrial base to meet the requirements of the clean energy economy is essential to our national security, a resilient energy sector, and the preservation of domestic critical infrastructure. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

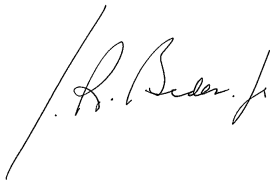
(1) insulation is an industrial resource, material, or critical technology item essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for insulation is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for insulation.

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



THE WHITE HOUSE,
Washington, June 6, 2022

[FR Doc. 2022–12584
Filed 6–8–22; 8:45 am]
Billing code 6450–01–P

Presidential Documents

Presidential Determination No. 2022–17 of June 6, 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Electrolyzers, Fuel Cells, and Platinum Group Metals

Memorandum for the Secretary of Energy

Ensuring a robust, resilient, and sustainable domestic industrial base to meet the requirements of the clean energy economy is essential to our national security, a resilient energy sector, and the preservation of domestic critical infrastructure. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

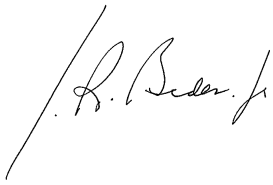
(1) electrolyzers, fuel cells, and platinum group metals are industrial resources, materials, or critical technology items essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for electrolyzers, fuel cells, and platinum group metals is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for electrolyzers, fuel cells, and platinum group metals.

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



THE WHITE HOUSE,
Washington, June 6, 2022

[FR Doc. 2022–12585
Filed 6–8–22; 8:45 am]
Billing code 6450–01–P

Presidential Documents

Presidential Determination No. 2022–18 of June 6, 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Electric Heat Pumps

Memorandum for the Secretary of Energy

Ensuring a robust, resilient, and sustainable domestic industrial base to meet the requirements of the clean energy economy is essential to our national security, a resilient energy sector, and the preservation of domestic critical infrastructure. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

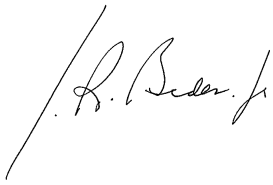
(1) electric heat pumps are industrial resources, materials, or critical technology items essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for electric heat pumps is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for electric heat pumps.

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



THE WHITE HOUSE,
Washington, June 6, 2022

[FR Doc. 2022–12586
Filed 6–8–22; 8:45 am]
Billing code 6450–01–P

Presidential Documents

Presidential Determination No. 2022–19 of June 6, 2022

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Transformers and Electric Power Grid Components

Memorandum for the Secretary of Energy

Ensuring a robust, resilient, and sustainable domestic industrial base to meet the requirements of the clean energy economy is essential to our national security, a resilient energy sector, and the preservation of domestic critical infrastructure. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(5) of the Act, that:

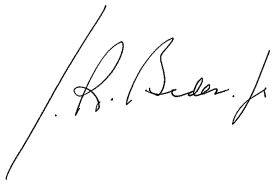
(1) transformers and electric power grid components are industrial resources, materials, or critical technology items essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost effective, expedient, and practical alternative method for meeting the need.

Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capability for transformers and electric power grid components is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the domestic production capability for transformers and electric power grid components.

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



THE WHITE HOUSE,
Washington, June 6, 2022

[FR Doc. 2022–12587
Filed 6–8–22; 8:45 am]
Billing code 6450–01–P

Presidential Documents

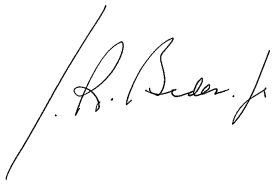
Memorandum of June 1, 2022

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

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of $700 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

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



THE WHITE HOUSE,
Washington, June 1, 2022

[FR Doc. 2022–12557
Filed 6–8–22; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 87, No. 111

Thursday, June 9, 2022

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0490; Airspace Docket No. 18–AWA–2]

RIN 2120–AA66

Amendment of Class B Airspace; Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Miami International Airport, FL (MIA) Class B airspace area to ensure the containment of aircraft conducting instrument procedures. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the MIA terminal area. The changes to the MIA Class B airspace area are to ensure the containment of arriving and departing aircraft within Class B airspace as required by FAA directives as contained in FAA Order 7400.2. This action is separate and distinct from the Florida Metroplex Project.

DATES: Effective date September 8, 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 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 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 modifies the Miami, FL, Class B airspace area to improve the flow of air traffic and enhance safety within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0490 in the **Federal Register** (86 FR 12868; March 5, 2021), modifying the Miami, FL, Class B airspace area. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received in response to the NPRM. All comments received were considered before making a determination on the final rule.

Class B airspace designations are published in paragraph 3000 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 B airspace designations listed in this document will be subsequently published in FAA Order JO 7400.11.

Discussion of Comments

An anonymous commenter wrote in support of the proposed Class B modifications. The Aircraft Owners and Pilots Association (AOPA) expressed four concerns about the proposal as discussed below.

First, AOPA acknowledged FAA's action to improve the availability of Visual Flight Rules (VFR) flight following in the MIA area, but stated that recent feedback from members indicated that VFR flight following can still be difficult to obtain particularly as ''FAA has indicated they are not able to provide a VFR corridor through this airspace.''

The current coronavirus (COVID–19) pandemic has impacted air traffic controller training and staffing which, at times, has limited the services controllers can provide to VFR aircraft due to workload. Within Miami Terminal Radar Approach Control (TRACON), training is resuming and staffing is returning to normal levels which will assist in creating additional opportunities to obtain/provide services to VFR aircraft when airborne. As a suggestion, VFR pilots wishing to receive air traffic control (ATC) services are encouraged to consider obtaining a VFR discreet code from ATC prior to departure.

Second, AOPA stated that the ceiling of Class D airspace areas should be consistent with the floor of the overlying Class B or C airspace. AOPA cited cases where a gap exists between the 2,500-foot Class D ceiling and the 3,000-foot floor of the overlying MIA Class B airspace; and, in the case of Miami Executive Airport (TMB), a portion of the Class D ceiling overlaps Area C of the MIA Class B airspace.

The FAA does not agree. The MIA Class B airspace was designed to support current operations and the various altitude floors are configured to ensure the containment of MIA traffic within Class B airspace once they enter it. Lowering of the Class B floors to match the ceilings of underlying Class D airspace areas was not justified by Class B design criteria or any ATC requirement. With regard to TMB's airspace, the Aeronautical Information Manual (AIM) informs pilots that, when overlapping airspace designations apply to the same airspace, the operating rules associated with the more restrictive airspace designation apply.

Third, AOPA restated its preference for the establishment of a VFR corridor through the MIA Class B airspace but expressed satisfaction that the FAA is considering the development of a VFR transition route as an alternative.

The FAA considered a VFR corridor but determined it is not feasible with current MIA area air traffic operations. As described in the AIM, VFR corridors are, in effect, a ''hole'' through Class B

airspace in which aircraft can operate without an ATC clearance or communication with ATC. Considering local constraints, including traffic volume and traffic flows, plus the close proximity of numerous airports in the MIA area, a VFR corridor could not be established for operational and flight safety reasons.

As an alternative, the FAA designed and implemented VFR Transition Routes which became effective beginning with the February 25, 2021, aeronautical charting cycle. The routes currently are depicted on the Miami VFR Terminal Area Chart (TAC), and the Miami/South Florida VFR Flyway Planning Chart. An ATC clearance is required to fly these routes. The charted notes identify the routes and provide frequencies and altitudes to expect. Operationally, although access to the transition routes is based on controller workload, it does provide more flexibility for both controllers and pilots.

Fourth, AOPA called for the formation of a new Ad Hoc Committee to evaluate the Class B airspace changes proposed in the NPRM due to the lapse in time from the original Ad Hoc Committee and complexities as the changes.

The FAA considered the request for a second Ad Hoc Committee. After studying the recommendations from the Committee, and the public comments from the Informal Airspace Meetings, the FAA made a number of changes to the Class B design and published an NPRM for additional public comment. The FAA believes that sufficient feedback was received to proceed with rulemaking, and therefore decided not to form a second Ad Hoc Committee.

Difference From the NPRM

In the regulatory text, the longitude coordinate for Miami Executive Airport (TMB) is changed from ''080°25′59″ W'' to ''080°26′00″ W'' to comply with decimal place rounding protocols.

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 action amends 14 CFR part 71 by modifying the Miami International Airport, FL, (MIA) Class B airspace area. This action modifies the lateral and vertical limits of Class B airspace to ensure the containment of large turbine-powered aircraft at MIA in Class B airspace once they enter the airspace, and enhance safety in the Miami terminal area (see the attached chart).

The FAA is issuing a separate final rule to modify the Fort Lauderdale-Hollywood International Airport (FLL) Class C airspace area that is located immediately to the north of the MIA Class B airspace area.

The modifications to the MIA Class B airspace area are described below.

In the text header of the MIA Class B airspace description, (as published in FAA Order JO 7400.11F), the geographic coordinates for MIA are updated to read ''lat. 25°47′43″ N, long. 080°17′24″ W''. The name of the ''Kendall-Tamiami Executive Airport'' is changed to its current name ''Miami Executive Airport'', and its geographic coordinates are updated to read ''lat. 25°38′51″ N, long. 080°26′00″ W''. These changes reflect the current National Airspace System Resources database information.

Area A. Area A continues to extend upward from the surface to 7,000 feet mean sea level (MSL). This rule modifies Area A by expanding the current 6 nautical mile (NM) radius to a 7 NM radius of the MIA International Airport. This resolves issues where aircraft exit and re-enter Class B airspace on final approach. Area A is also modified by excluding that airspace ''South of lat. 25°42′18″ N (SW 72nd Street in the cities of Sunset and South Miami).'' This moves the southern boundary of the surface area to the north of the Dadeland Shopping Center keeping it outside the surface area, and allowing VFR aircraft to have continued use of that charted VFR checkpoint for arrivals and departures out of the TMB area.

Area B. Area B extends from 1,500 feet MSL to 7,000 feet MSL. The FAA is modifying Area B by extending the current eastern boundary from the 10 NM radius of MIA out to the 13 NM radius of the airport. This change contains MIA arrivals within Class B airspace, and provides protection for VFR aircraft transitioning under the Class B airspace. Additionally, the western boundary of Area B is moved from the current 10 NM radius of MIA slightly westward to run along Krome Avenue, providing pilots with a visual reference for that boundary. To assist with visual identification of the northern boundary of Area B (along lat. 25°53′03″ N), the street reference ''NW 103rd Street/49th Street in the City of Hialeah'' is added to the description.

Area C. Area C extends from 2,000 feet MSL to 7,000 feet MSL. The only change to this area is extending the boundary formed by the existing 4.3 NM radius of TMB southwestward (counterclockwise) to intersect the western boundary of the new Area H (*i.e.,* the 13 NM radius of MIA), as described below.

Area D. Area D extends from 3,000 feet MSL to 7,000 feet MSL. Originally, the FAA proposed to expand Area D's western boundary from the current 20 NM radius west of MIA, further westward to the 25 NM radius of MIA. Based on comments received, the FAA decided to retain the western boundary of Area D at the current 20 NM radius of MIA. This rule establishes Area J (west of Area D, described below) between the 20 NM and 25 NM radii of MIA. Area J extends from 4,000 feet MSL to 7,000 feet MSL, providing additional altitudes for transiting aircraft. This rule also incorporates that airspace above TMB, that is currently designated ''Area G,'' into Area D. The existing Area G extends from 5,000 feet MSL to 7,000 feet MSL. Incorporating this airspace into Area D lowers the floor of Class B airspace in that area to 3,000 feet MSL. This change protects southbound departures from MIA during a west operation. The ''Area G'' designation is reused elsewhere in the MIA Class B as described later.

Area E. The only change to Area E is minor updates to the latitude/longitude coordinates that define the northeast side of the area for greater accuracy.

Area F. Area F extends from above 1,000 feet MSL to 7,000 feet MSL. The eastern boundary of Area F is extended from the current 6 NM radius of MIA out to the 7 NM radius of MIA. The south end of Area F is moved slightly northward to lat. 25°42′18″ N to align with the new southern boundary of Area A.

Area G. A new Area G is designated in that airspace west of Miami-Opa Locka Executive Airport that is currently designated Area H (the H designation is reused as described below). The northwestern boundary of the existing Area H is the 10 NM radius from MIA. In the new Area G, this boundary is expanded further to the northwest to align with State Road 997/Krome Avenue. The new Area G consists of that airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL, bounded on the South by lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of

Hialeah), on the west and northwest by State Road 997/Krome Ave, on the East by the Miami Canal (paralleling US 27), and the northern boundary point defined by the intersection of the Miami Canal and State Road 997/Krome Ave. Aligning boundaries with streets and other ground references assists pilots with visual identification of the boundaries.

Area H. Area H is a new area that extends from 2,000 feet MSL to 7,000 feet MSL. It is located directly west of the Area B western boundary. Area H is bounded on the east by State Road 997/Krome Avenue; on the south by the 4.3 NM radius of TMB (the northern boundary of Area C); and on the west by the 13 NM radius of MIA. Area H provides containment of MIA arrivals in Class B airspace. Its base altitude of 2,000 feet MSL, and the visual reference provided by Krome Avenue, allows VFR aircraft to transition just west of Krome Avenue below 2,000 feet MSL without conflicting with MIA arrivals.

Area I. Area I is a new area, located east of MIA between the 20 NM and 25 NM radii from the airport. Area I extends from 5,000 feet MSL to 7,000 feet MSL. Area I is bounded by that airspace beginning at the intersection of lat. 25°57′48″ N and the 20 NM radius of MIA, thence moving East along lat. 25°57′48″ N to the intersection of a 25 NM radius of MIA, thence moving clockwise along the 25 NM radius to the Dolphin VORTAC 151°(T)/155°(M) radial, thence Northwest along the Dolphin VORTAC 151°(T)/155°(M) radial to the intersection of a 20 NM radius of MIA, thence counter-clockwise along the 20 NM radius to the point of beginning. This expansion is needed to contain aircraft on the downwind leg within Class B airspace. The 5,000 foot MSL base altitude of Area I gives VFR aircraft transitioning the area over water the ability to fly under the Class B airspace.

Area J. Area J is a new area located west of MIA between the 20 NM and 25 NM radii from the airport. Area J extends from 4,000 feet MSL to 7,000 feet MSL. Area J is bounded by that airspace beginning northwest of MIA at the intersection of a 25 NM radius of Miami International Airport and lat. 25°57′48″ N, thence east along lat. 25°57′48″ N to the intersection of a 20 NM radius of Miami International Airport, thence counter-clockwise along the 20 NM radius to lat. 25°40′19″ N, thence west along lat. 25°40′19″ N to the intersection of a 25 NM radius of Miami International Airport, thence clockwise along the 25 NM radius to the point of beginning.

In summary, the existing MIA Class B airspace design does not currently address the rapidly increasing general aviation and air carrier operations in the South Florida terminal area. The Class B modification provides:

—Containment of MIA arrivals and departures in Class B airspace;
—Increased safety by segregation of large turbine-powered aircraft from nonparticipating; traffic during critical stages of flight;
—Improved utilization of airspace;
—Improved traffic patterns that allow for stabilized approaches;
—Reduced workload for both pilots and controllers; and,
—Enhanced overall efficiency of the movement of air traffic in the area.

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this final rule.

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined that this final rule: (1) is expected to have a minimal cost impact, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not significant as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

As discussed above, the FAA determined that changes put forth in this final rule would increase airspace safety and efficiency. The final rule would modify the lateral and vertical limits of Class B airspace around Miami International Airport (MIA) impacting commercial and general aviation flights transiting the airspace at the time of writing. The modification is in response to increased commercial and general aviation activity at and near MIA airport at the time of writing. Currently, MIA Class B airspace does not fully contain aircraft flying instrument procedures at MIA. Aircraft routinely exit and re-enter MIA Class B airspace on final approach to MIA leading to safety issues with respect to flight separation between participating and non-participating aircraft outside of Class B airspace.

The modifications proposed in this final rule are intended only to expand Class B airspace, where necessary, to contain large, turbine-powered aircraft while minimizing the impact on the use of the airspace by other aircraft. An analysis of existing MIA traffic flows shows that the Class B airspace modifications would better contain IFR flights arriving and departing MIA inside Class B airspace, and provide better separation between IFR aircraft and VFR aircraft operating in the vicinity of the Class B airspace area. Constructing sufficient airspace for safe control and separation of IFR flights improves the flow of air traffic, and more importantly enhances safety, reducing the potential for midair collision in the MIA terminal area.

The expansion to Class B airspace will affect the VFR and general aviation community. VFR operators will need to adjust their routes for the modified MIA Class B airspace. However, as mentioned above, the FAA initiated

outreach between 2010 and 2019 for input and recommendations from the effected aviation community on the planned modifications to the MIA airspace. The feedback resulted in changes to the airspace design with the intent of maintaining safety and minimizing the impact to operators using the surrounding airspace.

Additionally, VFR operators can use the current north-south charted VFR Flyway below the 3,000-foot Class B floor to the west of MIA, which enables pilots to fly beneath the Class B, or contact MIA Approach to request flight following, if desired, to lessen the impact. Therefore, the FAA expects the Class B modifications in this final rule will result in minimal cost to VFR operators. The FAA requested comments on the benefits and costs of the change and received no comments with benefit or cost data.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The final rule modifies the Class B airspace around MIA. The change affects general aviation operators using the airspace at or near MIA. Operators flying VFR will need to adjust their flight paths to avoid the modified Class B airspace. However, the modifications to Class B airspace are intended to be the least restrictive option while maintaining safety. Additionally, VFR operators can also use the current north-south charted VFR flyway below the 3,000-foot Class B floor to the west of MIA, which enables pilots to fly beneath the Class B or VFR pilots have the option to contact Miami Approach and request flight following, if desired. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it would improve safety and is consistent with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $158 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

ICAO Considerations

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action of modifying the Miami International Airport, FL, Class B airspace area to ensure the containment of arriving and departing aircraft, and to reduce the potential for midair collisions in the Miami area, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 the FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10,

2021, and effective September 15, 2021, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

ASO FL B Miami, FL [Amended]

Miami International Airport (Primary Airport)
(Lat. 25°47′43″ N, long. 080°17′24″ W)
Miami Executive Airport (TMB)
(Lat. 25°38′51″ N, long. 080°26′00″ W)
Dolphin VORTAC (DHP)
(Lat. 25°48′00″ N, long. 080°20′57″ W)

Boundaries.

Area A. That airspace extending upward from the surface to and including 7,000 feet MSL within a 7 nautical mile radius of Miami International Airport, excluding that airspace north of at. 25°52′03″ N. (NW 103rd Street/49th Street in the City of Hialeah), and the airspace south of lat. 25°42′18″ N. (SW 72nd Street in the Cities of Sunset and South Miami), and within and underlying Area F described hereinafter.

Area B. That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within a 13 nautical mile radius of Miami International Airport, excluding that airspace north of lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), and that airspace south of lat. 25°40′19″ N, within Area A previously described, and within Areas C, F, and H described hereinafter.

Area C. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within an area bounded on the north and northeast by a 4.3 nautical mile radius of Miami Executive Airport (TMB), and on the south by lat. 25°40′19″ N, and on the southwest by a 13 nautical mile radius of Miami International Airport.

Area D. That airspace extending upward from 3,000 feet MSL to and including 7,000 feet MSL beginning northwest of Miami International Airport at the intersection of a 20 nautical mile radius of Miami International Airport and lat. 25°57′48″ N, thence East along lat. 25°57′48″ N, to the intersection of a 15 nautical mile radius of Miami International Airport, thence clockwise along the 15 nautical mile radius to lat. 25°57′48″ N, thence east along lat. 25°57′48″ N, to the intersection of a 20 nautical mile radius of Miami International Airport, thence clockwise along the 20 nautical mile radius to the Dolphin VORTAC (DHP) 151° radial, thence northwest along the Dolphin VORTAC (DHP) 151° radial to the intersection of a 15 nautical mile radius of Miami International Airport, thence clockwise along the 15 nautical mile radius of Miami International Airport to lat. 25°40′19″ N, thence west along lat. 25°40′19″ N, to the intersection of a 20 nautical mile radius of Miami International Airport, thence clockwise along the 20 nautical mile radius to the point of beginning, excluding the airspace within Areas A, B, and C, previously described and within Areas F, G, and H described hereinafter.

Area E. That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL bounded on the south by lat. 25°57′48″ N, on the northwest by a 20 nautical mile radius of Miami International Airport, on the northeast by a line from lat. 26°06′02″ N, long. 80°26′27″ W, to lat. 26°01′38″ N, long. 80°23′44″ W, and on the southeast by a 15 nautical mile radius of Miami International Airport.

Area F. That airspace extending upward from but not including 1,000 feet MSL to and including 7,000 feet MSL bounded on the east by a 7 nautical mile radius of Miami International Airport, on the west by the west shoreline of Biscayne Bay, and on the south by lat. 25°42′18″ N, (SW 72nd Street in the Cities of Sunset and South Miami).

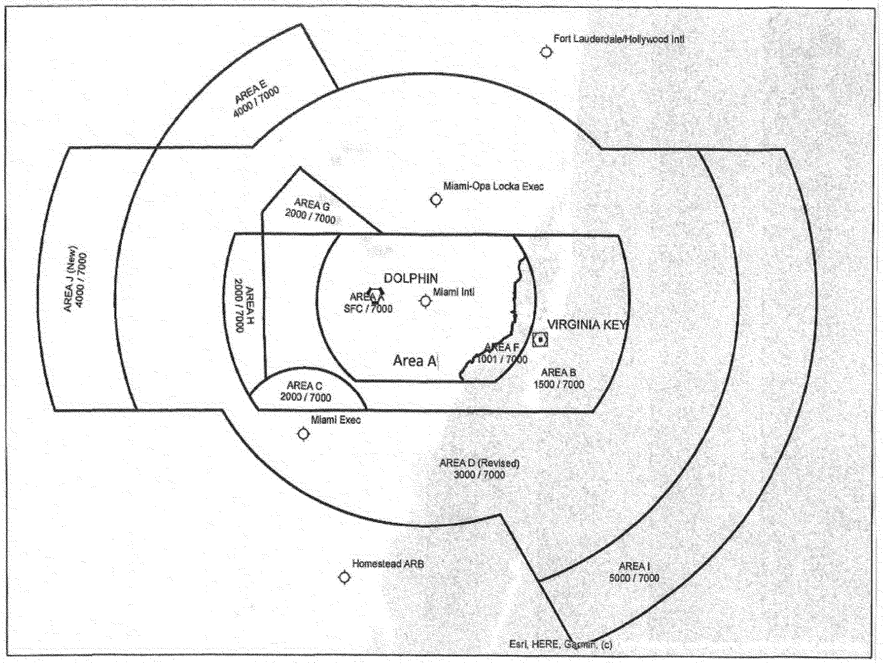
Area G. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL bounded on the south by lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), on the west and northwest by State Road 997/Krome Ave, on the east by the Miami Canal (paralleling US 27), and the northern boundary point defined by the intersection of the Miami Canal and State Road 997/Krome Ave.

Area H. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL bounded on the west by a 13 nautical mile radius of Miami International Airport, on the south by a 4.3 nautical mile radius of Miami Executive Airport (TMB), on the east by State Road 997/Krome Ave, and on the north by a line along lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah).

Area I. That airspace extending upward from 5,000 feet MSL to and including 7,000 feet MSL beginning at the intersection of lat. 25°57′48″ N, and a 20 nautical mile radius of Miami International Airport, thence moving east along lat. 25°57′48″ N, to the intersection of a 25 nautical mile radius of Miami International Airport, thence moving clockwise along the 25 nautical mile radius to the Dolphin VORTAC 151° radial, thence northwest along the Dolphin VORTAC 151° radial to the intersection of a 20 nautical mile radius of Miami International Airport, thence counter-clockwise along the 20 nautical mile radius to the point of beginning.

Area J. That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL beginning northwest of Miami International Airport at the intersection of a 25 nautical mile radius of Miami International Airport and lat. 25°57′48″ N, thence east along lat. 25°57′48″ N, to the intersection of a 20 nautical mile radius of Miami international Airport, thence counter-clockwise along the 20 nautical mile radius to lat. 25°40′19″ N, thence west along lat. 25°40′19″ N, to the intersection of a 25 nautical mile radius of Miami International Airport, thence clockwise along the 25 nautical mile radius to the point of beginning.

Modification of the Miami, FL Class B Airspace Area
(Docket No. 18-AWA-2)



Information Only - Not For Navigation

* * * * *

Issued in Washington, DC, on June 3, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–12300 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to implement elements of the policy announced by the Administration on May 16, 2022 to increase support for the Cuban people. This rule authorizes group people-to-people educational travel to Cuba and removes certain restrictions on authorized academic educational activities, authorizes travel to attend or organize professional meetings or conferences in Cuba, removes the $1,000 quarterly limit on family remittances, and authorizes donative remittances to Cuba. These amendments also add or update several cross references.

DATES: This rule is June 9, 2022.

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

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301–44). OFAC has amended the Regulations on numerous occasions. Today, OFAC, in consultation with the Department of State, is amending the Regulations to implement certain policy changes announced by the Administration on May 16, 2022 to increase support for the Cuban people, as set forth below.

Professional meetings and conferences in Cuba. OFAC is amending the general license at § 515.564 to include an authorization for travel-related and other transactions incident to travel to Cuba to attend or organize professional meetings or conferences in Cuba. OFAC is also amending and adding cross-references to § 515.564(a) in notes to §§ 515.534, 515.542, 515.547, 515.572, 515.577, and 515.591.

Group people-to-people educational travel and other academic educational activities. OFAC is amending the general license at § 515.565 to add an authorization for group people-to-people educational travel that takes place under the auspices of an organization that is subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact, subject to certain restrictions. Such travelers must be accompanied by an employee, paid consultant, or agent of the sponsoring organization. Travel-related transactions authorized pursuant to § 515.565(b) must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities; and will result in meaningful interactions with individuals in Cuba. OFAC is also amending the general license at § 515.565 to remove certain restrictions on authorized academic educational activities. This amendment does not authorize individual people-to-people travel-related transactions.

OFAC is not authorizing travel-related transactions for travel to, from, or within Cuba for tourist activities, which are prohibited by statute.

Remittances. OFAC is amending § 515.570(a) to remove the $1,000 quarterly limit on remittances to Cuban nationals who are close relatives. OFAC is also adding § 515.570(b) to authorize donative remittances to Cuban nationals who are not prohibited officials of the Government of Cuba, prohibited members of the Cuban Communist Party, or close relatives of a prohibited official of the Government of Cuba or prohibited member of the Cuban Communist Party. OFAC is also adding § 515.570(h) authorizing the unblocking and return of blocked remittances, provided they would be authorized under § 515.570(a) or (b).

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and § 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164, 1505–0167, and 1505–0168. 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 control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banks, banking, Blocking of assets, Cuba, Credit, Foreign trade, Penalties, Professional meetings, Remittances, Reporting and recordkeeping requirements, Sanctions, Securities, Services, Travel restrictions.

For the reasons set forth in the preamble, OFAC amends 31 CFR part 515 as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 6021–6091; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 515.534 [Amended]

■ 2. In note to § 515.534, after ''certain items to Cuba'' add '', and § 515.564(a)(2) for a general license authorizing travel-related and other transactions incident to attending or organizing professional meetings in Cuba, which include professional meetings relating to the negotiation of contingent contracts authorized by this section''.

■ 3. Amend note 1 to § 515.542 by adding a sentence to the end to read as follows:

§ 515.542 Mail and telecommunications-related transactions.

* * * * *

Note 1 to § 515.541: * * * For an authorization of travel-related transactions that are directly incident to participation in professional meetings, including where such meetings relate to telecommunications services or other activities authorized by paragraphs (b) through (e) of this section, see § 515.564(a).

* * * * *

§ 515.547 [Amended]

■ 4. In note 2 to paragraph (a), after ''research'' add ''and professional meetings''.

§ 515.561 [Amended]

■ 5. In § 515.561, in paragraph (a) introductory text, remove ''§ 515.564(a)'' and add in its place ''§ 515.564(a)(1)'' and remove ''§ 515.565(a)(1)(i) through (iv) and (vi)'' and add in its place ''§ 515.564(a)(1) through (4) and (6)''.

■ 6. Amend § 515.564 as follows:

■ a. Redesignate paragraph (a) introductory text as paragraph (a)(1) and add a subject heading to newly designated paragraph (a)(1);

■ b. Redesignate existing paragraph (a)(1) and paragraph (a)(2) as paragraphs (a)(1)(i) and (ii), respectively;

■ c. In the heading for the example to § 515.564(a), remove ''§ 515.564(a)'' and add in its place ''paragraph (a)(1)'';

■ d. Redesignate note 1 to paragraph (a) as note 1 to paragraph (a)(1);

■ e. Redesignate note 2 to paragraph (a) as note 3 to paragraph (a);

■ f. Add new paragraph (a)(2);

■ g. In the heading for the example to § 515.564(b), remove ''§ 515.564(b)'' and add in its place ''paragraph (b)''; and

■ h. In paragraph (e):

■ i. Remove ''either:'';

■ ii. Add ''or professional meetings'' after ''professional research'';

■ iii. Remove ''does'' and add in its place ''do''; and

■ iv. Remove '', or professional meetings or conferences in Cuba that are not otherwise authorized pursuant to other travel-related authorizations and relate to activities otherwise authorized pursuant to this part'' and add a period in its place.

The additions reads as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) * * *

(1) *Professional research.* * * *

(2) *Professional meetings.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to attendance at, or organization of, professional meetings or conferences in Cuba are authorized, provided that:

(i) For a traveler attending a professional meeting or conference, the purpose of the meeting or conference directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;

(ii) For a traveler organizing a professional meeting or conference on behalf of an entity, either the traveler's profession must be related to the organization of professional meetings or conferences or the traveler must be an employee or contractor of an entity that is organizing the professional meeting or conference; and

(iii) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of attendance at, or organization of, professional meetings or conferences.

Note 2 to paragraph (a)(2). Transactions incident to the organization of professional meetings or conferences include marketing related to such meetings or conferences in Cuba.

* * * * *

■ 7. Amend § 515.565 as follows:

■ a. Revise paragraphs (a) and (b).

■ b. Remove paragraphs (d) and (e).

■ c. Redesignate paragraphs (f), (g), and (h) as paragraphs (d), (e), and (f), respectively.

■ d. In newly designated paragraph (d), remove ''(a), (b), (d), or (e)'' and add in its place ''(a) or (b)''.

■ e. In newly designated paragraph (f), remove ''general license under paragraph (a)'' and add in its place ''general licenses under paragraph (a) or (b)''.

The revisions read as follows:

§ 515.565 Educational Activities

(a) *General license for educational activities.* Persons subject to U.S. jurisdiction, including U.S. academic institutions and their faculty, staff, and students, are authorized to engage in the travel-related transactions set forth in § 515.560(c), that are related to:

(1) Participation in a structured educational program in Cuba as part of a course offered for credit by a U.S. graduate or undergraduate degree-granting academic institution that is sponsoring the program;

(2) Noncommercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining an undergraduate or graduate degree;

(3) Participation in a formal course of study at a Cuban academic institution, provided the formal course of study in Cuba will be accepted for credit toward the student's graduate or undergraduate degree;

(4) Teaching at a Cuban academic institution related to an academic program at the Cuban institution, provided that the individual is regularly employed by a U.S. or other non-Cuban academic institution;

(5) Sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution (in addition to those transactions authorized by the general license contained in § 515.571).

Note 1 to paragraph (a)(5). *See* § 515.571(a) for authorizations related to certain banking transactions and receipt of salary or other compensation by Cuban nationals present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

(6) Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. This includes participation by a reasonable number of adult chaperones to accompany the secondary school students to Cuba.

(7) Sponsorship or co-sponsorship of noncommercial academic seminars, conferences, symposia, and workshops related to Cuba or global issues involving Cuba and attendance at such events by faculty, staff, and students of a participating U.S. academic institution;

(8) Establishment of academic exchanges and joint non-commercial academic research projects with universities or academic institutions in Cuba;

(9) Provision of standardized testing services, including professional certificate examinations, university entrance examinations, and language examinations, and related preparatory services for such exams, to Cuban nationals, wherever located;

(10) Provision of internet-based courses, including distance learning and Massive Open Online Courses, to Cuban nationals, wherever located, provided that the course content is at the undergraduate level or below;

(11) The organization of, and preparation for, activities described in paragraphs (a)(1) through (10) of this section by employees or contractors of the sponsoring organization that is a person subject to U.S. jurisdiction; or

(12) Facilitation by an organization that is a person subject to U.S. jurisdiction, or a member of the staff of such an organization, of licensed educational activities in Cuba on behalf of U.S. academic institutions or secondary schools, provided that:

(i) The organization is directly affiliated with one or more U.S. academic institutions or secondary schools; and

(ii) The organization facilitates educational activities that meet the requirements of one or more of the general licenses set forth in paragraphs (a)(1) through (3) and (6) of this section.

Note 2 to paragraph (a). *See* § 515.560(c)(6) for an authorization for individuals to open and maintain accounts at Cuban financial institutions; see § 515.573 for an authorization for entities conducting educational activities authorized by this paragraph (a) to establish a physical presence in Cuba, including an authorization to open and maintain accounts at Cuban financial institutions.

Note 3 to paragraph (a). The authorization in this paragraph extends to adjunct faculty and part-time staff of U.S. academic institutions. A student enrolled in a U.S. academic institution is authorized pursuant to paragraph (a)(1) of this section to participate in the academic activities in Cuba described above through any sponsoring U.S. academic institution.

Note 4 to paragraph (a). The export or reexport to Cuba of items subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

Note 5 to paragraph (a). *See* § 515.590(a) for an authorization for the provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest.

(b) *General license for people-to-people travel.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to educational exchanges not involving academic study pursuant to a degree program are authorized, provided that:

(1) The exchanges take place under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact;

(2) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities;

(3) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

(4) An employee, paid consultant, or agent of the sponsoring organization accompanies each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and

(5) The predominant portion of the activities engaged in by individual travelers is not with a prohibited official of the Government of Cuba, as defined in § 515.337, or a prohibited member of the Cuban Communist Party, as defined in § 515.338.

(6) In addition to all other information required by § 501.601 of this chapter, entities sponsoring travel pursuant to the authorization in this paragraph (b) must retain records sufficient to demonstrate that each individual traveler has engaged in a full-time schedule of activities that satisfy the requirements of paragraphs (b)(1) through (5) of this section. Individuals may rely on the entity sponsoring the travel to satisfy their recordkeeping requirements with respect to the requirements of paragraphs (b)(1) through (5) of this section. These

records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 501.602 of this chapter.

Example 1 to paragraph (b): An organization wishes to sponsor and organize educational exchanges not involving academic study pursuant to a degree program for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts. The travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba. The organization's activities qualify for the general license.

Example 2 to paragraph (b): An individual plans to travel to Cuba to participate in discussions with Cuban artists on community projects, exchanges with the founders of a youth arts program, and extended dialogue with local city planners and architects to learn about historical restoration projects in Old Havana. The individual traveler will have a full-time schedule of such educational exchange activities that result in meaningful interaction between the traveler and individuals in Cuba. The individual's activities do not qualify for the general license for people-to-people travel because the individual is not traveling under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact. The individual's travel may qualify for the general license in § 515.574 (Support for the Cuban People) provided the individual meets all of its requirements.

Note 6 to paragraph (b). An organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license. Authorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.

Note 7 to paragraphs (a) and (b). Except as provided in paragraph (b)(6) of this section, each person relying on the general authorizations in these paragraphs, including entities sponsoring travel pursuant to the authorization in paragraph (b) of this section, must retain specific records related to the authorized travel transactions. *See* §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

* * * * *

■ 8. Amend § 515.570 as follows:

■ a. Remove paragraph (a)(1);

■ b. Redesignate paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3), respectively;

■ c. Add paragraph (b);

■ d. In paragraph (d), remove ''§ 515.565(h)'' in both places where it appears and add in its place ''§ 515.565(f)''; and

■ e. Add paragraph (h).

The additions read as follows:

§ 515.570 Remittances.

(b) *Donative remittances to Cuban nationals authorized.* Persons subject to the jurisdiction of the United States are authorized to make donative remittances to Cuban nationals, provided that:

(1) The remittances are not made from a blocked source;

(2) The recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337, a prohibited member of the Cuban Communist Party, as defined in § 515.338, a close relative, as defined in § 515.539, of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party;

(3) The remittances are not made for emigration-related purposes (which are addressed by paragraph (e) of this section); and

(4) The remitter, if an individual, is 18 years of age or older.

* * * * *

(h) *Unblocking of certain previously blocked remittances authorized.* Banking institutions, as defined in § 515.314, are authorized to engage in all transactions necessary to unblock and return remittances if they would have qualified as authorized had they been sent under current paragraph (a) or (b) of this section, provided that persons subject to U.S. jurisdiction unblocking remittances originally blocked on or after August 25, 1997 pursuant to this section must submit a report to the Department of the Treasury, Office of Foreign Assets Control, Attn: Sanctions Compliance & Evaluation Division, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220 within 10 business days from the date such remittances are released. Such reports shall include the following:

(1) Where available, a copy of the original blocking report filed with OFAC pursuant to § 501.603(b)(1) of this chapter;

(2) The date the unblocked remittance was released;

(3) The amount of funds unblocked;

(4) The name of the party to whom the remittance was released; and

(5) A reference to this section as the legal authority under which the remittance was unblocked and returned.

* * * * *

■ 9. Amend § 515.572 as follows:

■ a. Redesignate note to paragraph (a)(5) as note 2 to paragraph (a)(5);

■ b. Add note 3 to paragraph (a); and

■ c. Redesignate note to § 515.572 as note 4 to § 515.572.

The addition reads as follows:

§ 515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.

(a) * * *

Note 3 to paragraph (a): Section 515.564 authorizes employees, officials, consultants, or agents of persons subject to U.S. jurisdiction providing travel or carrier services or remittance forwarding services authorized pursuant to this part to engage in the travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba for professional meetings in Cuba, such as those related to safety and security of flights to and from Cuba, or necessary to arrange for travel or carrier services or remittance forwarding to Cuba.

* * * * *

■ 10. Amend § 515.577 by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e).

The addition reads as follows:

§ 515.577 Authorized transactions necessary and ordinarily incident to publishing.

* * * * *

(e) Section 515.564(a)(2) authorizes the travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to attendance at or organization of professional meetings that are necessary and ordinarily incident to the publishing and marketing of written publications.

* * * * *

§ 515.591 [Amended]

■ 11. In note 2 to § 515.591, after ''professional research'', add ''and professional meetings''.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–12445 Filed 6–8–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0472]

Safety Zone; Annual Fireworks Displays Within the Captain of the Port Zone, Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zone regulations at various locations in the Sector Columbia River Captain of the Port Zone from July 4, 2022 to July 23, 2022 to provide for the safety of life on navigable waters during these fireworks displays. Our regulation for fireworks displays within the Thirteenth Coast Guard District identifies the regulated areas and the approximate dates for these events. The specific dates and times are identified in this notice. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.1315, Table 1, will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zones in 33 CFR 165.1315, Table 1, for the events specified below, during the designated enforcement periods, and within a 450 yard radius of the launch site and the listed locations. This action is being taken to provide for the safety of life on navigable waterways during these events.

Our regulation for fireworks displays within the Thirteenth Coast Guard District, 33 CFR 165.1315, Table 1, designates the regulated areas and identifies the approximate dates for these events. The specific dates and times are specified below. During the enforcement periods, as reflected in § 165.1315, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. These safety zones are subject to enforcement at least 1 hour prior to the start and 1 hour after the conclusion of the events.

TABLE 1—DATES AND DURATIONS OF ENFORCEMENT FOR 33 CFR 165.1315 SAFETY ZONES AT VARIOUS LOCATIONS WITHIN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2022

Event name	Event location	Date of event	Latitude	Longitude
Oaks Park Association 4th of July	Portland, OR	July 4, 2022 9:30 p.m. to 11 p.m	45°28′22″ N	122°39′59″ W
Port of Cascade Locks 4th of July	Cascade Locks, OR	July 4, 2022 9:30 p.m. to 11 p.m	45°40′15″ N	121°53′43″ W
Clatskanie Heritage Days Fireworks	Clatskanie, OR	July 4, 2022 9:30 p.m. to 11 p.m	46°06′17″ N	123°12′02″ W
Westport 4th of July	Westport, WA	July 4, 2022 9:30 p.m. to 11:30 p.m	46°54′17″ N	124°05′59″ W
Garibaldi Days Fireworks	Garibaldi, OR	July 23, 2022 9:30 p.m. to 11 p.m	45°33′13″ N	123°54′56″ W

All coordinates are listed in reference Datum NAD 1983.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of these enforcement periods via the Local Notice to Mariners and Broadcast notice to mariners.

Dated: June 3, 2022.

M. Scott Jackson,

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

[FR Doc. 2022–12454 Filed 6–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0473]

RIN 1625–AA00

Safety Zone; Firework Display; Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500 yard radius from a fireworks barge located near Town Point Park in Norfolk, VA. The purpose of this rulemaking is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events. Hazards with this event include potential falling debris and possible fire, explosion, projectile, and burn hazards. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Virginia.

DATES: This rule is effective from noon on June 10, 2022, through 11:59 p.m. on June 12, 2022. This rule will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This rule may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF–FM marine band radio.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0473 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580 email *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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. It is impracticable and contrary to the public interest to publish an NPRM for this rule because this safety zone must be in effect by June 11, 2022, to ensure the safety of persons, vessels, and the navigable waters within close proximity to the fireworks display from potential hazards that associated with this event. These potential hazards include falling debris and possible fire, explosion, projectile, and burn hazards. There is not sufficient time to allow for a notice and comment period prior to the event.

While we are unable to provide the public a chance to comment on the temporary final rule establishing a safety zone for this year's event, we have recently solicited comments from the public for a safety zone at this location for future fireworks displays associated with Harborfest. On March 18, 2022, the Coast Guard published an NPRM to amend its safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility (87 FR 15347). That proposal included the addition of a recurring safety zone for Harborfest at the same location as this temporary final rule. On May 13, 2022, the final rule was published and the Coast Guard addressed the one comment received (87 FR 29226). This temporary final rule is needed because the final rule establishing the recurring event will not be effective until after the event for this year.

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 would be impracticable and contrary to the public interest. Immediate action is needed to ensure the safety of event spectators, support craft and other vessels transiting the navigational waters adjacent to the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However, advance notifications will be made to affected users of the waterway via marine information broadcasts and an article in the Local Notice to Mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks events present a safety concern for anyone within the safety zone. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from noon on June 10, 2022, through 11:59 p.m. on June 12, 2022. This rule will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This rule may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF–FM marine band radio.

The safety zone will cover all navigable waters within a 500 yard radius from a fireworks barge located at approximate latitude 36°50′41″ N, longitude 076°17′47″ W, located near Town Point Park in Norfolk, VA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. 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 short amount of time that vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. This rule will be in effect for 36 hours. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated area. Advance notifications will also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. The Coast Guard anticipates that this safety zone will only be enforced for a limited duration while it is in effect.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 30 minutes that will prohibit entry within 500 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60c of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0473 to read as follows:

§ 165.T05–0473 Safety Zone; Firework Display; Elizabeth River, Norfolk, VA.

(a) *Location.* The following area is a safety zone: all waters of the Elizabeth River within a 500 yard radius from a fireworks barge located at approximate position latitude 36°50′41″ N, longitude 076°17′47″ W, located near Town Point Park in Norfolk, VA.

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

(c) *Regulation.* (1) No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This section may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF–FM marine band radio.

Dated: June 3, 2022.

S.C. Stevens,

Captain, U.S. Coast Guard, Captain of the Port Virginia.

[FR Doc. 2022–12408 Filed 6–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0450]

RIN 1625–AA87

Security Zone; Parker Canyon, Pacific Palisades, CA

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the navigable waters of Parker Canyon from surface to bottom, encompassed by a line connecting the following points beginning at 34°02′12″ N, 118°33′26″ W; thence to 34°02′19″ N, 118°34′33″ W; to the shoreline back to the beginning point, off the eastern end of Topanga beach, CA, in support of a

visit from persons under the protection of the United States Secret Service (USSS). The security zone is necessary to protect the protected person and their official party while on location at the event. All vessels and people are prohibited from entering into or remaining within the security zone unless specifically authorized by the Captain of the Port (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective from 6 p.m. through 10 p.m. on June 9, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0450 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 521–3860 or email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive notification of this event involving persons under the protection of the USSS with sufficient time to issue a NPRM and solicit comments. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this security zone by June 9, 2022, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. This rule must be effective on June 9, 2022, to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70011, as delegated by Department of Homeland Security (DHS) Delegation No.00170.1(II)(70), Revision No. 01.2, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captain of the Port. In addition, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 70011(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during USSS protected presence. The Captain of the Port Los Angeles—Long Beach determined that potential hazards may arise due to the persons under the protection of the USSS and their official party will be attending an event off Pacific Palisades, CA, on June 9, 2022. The USSS requested that the Coast Guard establish a security zone on the waters surrounding the event location off the eastern end of Topanga beach, Pacific Palisades, CA. The purpose of the temporary security zone is to facilitate the security and safety of the persons under the protection of the USSS during the visit.

As a result, in consultation with the USSS, the Captain of the Port Los Angeles—Long Beach has determined that the security zone is necessary to provide security for the protected person and his official party.

IV. Discussion of the Rule

This rule establishes a security zone from 6 p.m. until 10 p.m. on June 9, 2022. The security zone will cover all navigable waters of Parker Canyon from surface to bottom, encompassed by a line connecting the following points beginning at 34°02′12″ N, 118°33′26″ W; thence to 34°02′19″ N, 118°34′33″ W; to the shoreline back to the beginning point, off the eastern end of Topanga beach, CA. The duration of the zone is necessary to protect the persons under the protection of the USSS and the official party while on location at the event. No vessel or person will be permitted to enter the security zone, or to remain within the security 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the security zone. The security zone impacts a small designated area in the surrounding waters of Topanga beach, Pacific Palisades, CA, for less than four hours. Moreover, the rule allows vessels to seek permission to enter the zone. The Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 to provide members of the public with information about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–098 to read as follows:

§ 165.T11–098 Security Zone; Parker Canyon, Pacific Palisades, CA.

(a) *Location.* The following area is a security zone: all navigable waters of Parker Canyon from surface to bottom, encompassed by a line connecting the following points beginning at 34°02′12″ N, 118°33′26″ W; thence to 34°02′19″ N, 118°34′33″ W; to the shoreline back to the beginning point, off the eastern end of Topanga beach. These coordinates are based on the North American Datum of 1983, World Geodetic System, 1984.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 16 or 310–521–3801. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced on June 9, 2022, from 6 p.m. through 10 p.m.

Dated: June 3, 2022.

K.L. Bernstein,

Captain, U.S. Coast Guard, Acting Captain of the Port Los Angeles—Long Beach.

[FR Doc. 2022–12409 Filed 6–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

RIN 0596–AD45

Assessing Fees for Excess and Unauthorized Grazing

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Forest Service (Agency), U.S. Department of Agriculture, hereby adopts this final rule to amend existing regulations for the provision of an option to waive excess and unauthorized grazing fees when excess or unauthorized grazing is determined to be a result of unforeseen or uncontrollable circumstances. This standard is consistent with the practices of the U.S. Department of the Interior, Bureau of Land Management, as recommended by the Government Accountability Office (GAO) in its July 2016 report to the Committee on Natural Resources, House of Representatives, *Unauthorized Grazing, Actions Needed to Improve Tracking and Deterrence Efforts.*

DATES: This rule is effective August 8, 2022.

FOR FURTHER INFORMATION CONTACT: David Lytle, Director, Forest and Rangeland Management and Vegetation Ecology, 928–419–7738, *David.Lytle@usda.gov.* Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service manages National Forest System (NFS) lands that provide forage for domestic livestock grazing. The Forest Service's authority to regulate livestock grazing comes from the Organic Administration Act of 1897, as amended (16 U.S.C. 551). The Forest Service first introduced regulations requiring grazing permits and imposing fees for grazing on the forest reserves, and later the national forests, in 1906. The Forest Service managed grazing under its general authorities until 1950, when Congress enacted the Granger-Thye Act (16 U.S.C. 580l), specifically authorizing the Secretary of Agriculture to issue grazing permits on NFS lands and other lands administered by the U.S Department of Agriculture. The Forest Service permits the occupancy and use of NFS lands by domestic livestock through grazing and livestock use permits in accordance with the regulations at 36 CFR part 222. Pursuant to 36 CFR 222.50(a), the Agency is required to charge fees ''for all livestock grazing or livestock use of National Forest System lands, or other lands under Forest Service control.''

Congress asked the Government Accountability Office (GAO) to examine what is known about the frequency and extent of unauthorized grazing on Federal lands and its effects. This examination included a review of the Bureau of Land Management (BLM) and Forest Service efforts to detect, deter, and resolve unauthorized grazing.

In July 2016, GAO issued a Report to the Committee on Natural Resources, House of Representatives, *Unauthorized Grazing, Actions Needed to Improve Tracking and Deterrence Efforts* (GAO–16–559). In the report, the GAO found that the frequency and extent of unauthorized grazing on NFS lands is largely unknown because according to Agency officials, the Agency handles most incidents informally (for example, with a telephone call) and does not document them. The incidents that were documented involved formal action taken by the Agency rangeland management program or law enforcement staff, such as issuance of a Notice of Non-Compliance and/or a Bill for Collection.

The GAO recommended that the Forest Service record all incidents of unauthorized grazing, including those resolved informally, as well as revise the excess and unauthorized grazing penalty structure to reflect the commercial value of forage. The Agency is responding to these two recommendations, but not as a part of this rulemaking process. Instead, the Agency has developed direction for implementing these two recommendations in the proposed Forest Service Manual and Handbook for Rangeland Management, which was released for public review and comment on December 18, 2020, for a 60-day comment period and extended for an additional 60-day comment period, ending April 17, 2021. (85 FR 82432, 86 FR 9048).

The GAO report also recommended the Forest Service either amend the regulations to allow the option to resolve excess and unauthorized grazing use without charging fees in some instances or follow the existing regulations by determining and charging a grazing use penalty for all unauthorized and excess use. Given the vast amount of land covered, and the wide array of natural and unnatural events that may occur across a variety of landscapes, the Agency believes it is important to have reasonable flexibility that allows for a commonsense approach to resolving certain instances of excess and unauthorized grazing use. In limited circumstances, when the use occurs because of unforeseen or uncontrollable circumstances, having the ability to waive excess and unauthorized grazing use fees will help to quickly resolve the issue while maintaining cooperative relationships. Therefore, the Forest Service amends its regulations at 36 CFR 222.50(h) to include an option for waiving the excess and unauthorized use fees when excess or unauthorized grazing use is a result of unforeseen or uncontrollable circumstances and meets all three conditions identified in the rule. Per the regulations at 36 CFR 261.2, unauthorized livestock are defined as livestock which are not authorized to be upon the land on which the livestock are located, and which is not related to use authorized by a grazing permit. ''Excess livestock'' are defined as livestock owned by the holder of a National Forest System grazing permit, but grazing on NFS lands in greater numbers, or at times or places other than permitted in Part 1 of the grazing permit or authorized on the annual Bill for Collection (FSM 2230.5).

On November 2, 2020, the Agency published a proposed rule (85 FR 69303) to revise 36 CFR 222.1(b) to add definitions of ''non-permittee'' and ''non-willful,'' to remove the numbering of definitions in that section (36 CFR 222.1(b)) and revise 36 CFR 222.50(h) to provide an option for nonmonetary settlement for excess or unauthorized grazing use. Following a 30-day comment period, the Agency received 33 unique, individual comments in response to the proposed rule. Most of the unique comments expressed support for the Agency's effort to provide an option to resolve excess and unauthorized grazing use cases without charging fees when the grazing use was at no fault of the livestock owner, while some commenters expressed confusion or concern regarding terms and statements, such as ''nonmonetary settlement,'' ''non-willful,'' and ''in the interest of the United States.'' A detailed summary of comments on the proposed rule and the Agency's responses, including changes made to the final rule language, is set forth below.

Summary of the Final Rule

The final rule carries forward the proposed amendments in the definitions section at 36 CFR 222.1(b), adopting the definition of ''non-permittee,'' as well as

restating the definitions section to remove the numbering and update the formatting to be consistent with the Federal Register Document Drafting Handbook (August 2018 Edition, Revision 1.1 dated August 9, 2019; National Archives and Records Administration). Minor grammatical and technical edits were also made.

The final rule does not add a definition for ''non-willful'', nor does it use that term in revised 36 CFR 222.50(h). The proposed rule used and defined the term ''non-willful'' as ''an action which is inadvertent or accidental, and not due to gross negligence.'' Several commenters expressed views that by using the term ''non-willful'', the Forest Service was implying a requirement that a determination of intent be made. The Forest Service agrees; therefore, we do not propose to require a determination of intent for the excess or unauthorized grazing use. Accordingly, to avoid confusion, the term ''non-willful'' has been removed in the final rule at 36 CFR 222.50(h) and is no longer in the definitions section at 36 CFR 222.1(b). It is replaced with the terms ''unforeseen'' and ''uncontrollable'' in the final rule to describe the circumstances for when excess or unauthorized use can be considered for a fee waiver. The terms ''unforeseen'' and ''uncontrollable'' are not added to the definitions section in the final rule, and the ordinary meaning of these terms shall apply. The Forest Service authorized officer will have the discretion to decide when a circumstance leading to unauthorized grazing was unforeseen or uncontrollable.

The final rule also does not use the term ''non-monetary'', which the proposed rule used to characterize the action of not charging fees for excess and unauthorized grazing use that was considered non-willful. Commenters expressed confusion over the term ''non-monetary settlement'' and exactly what it meant. Some commenters expressed views that fees should be charged for all grazing use. To clarify intent in the final rule, the term ''non-monetary settlement'' has been replaced with language allowing an option to ''waive'' the fees. The option to waive the fees is intended to make the rule clear and concise such that all excess and unauthorized grazing use shall be charged unless the specific conditions set forth in the regulation are met, at which time the authorized officer may then decide to ''waive'' the excess or unauthorized grazing use fees. The only instances of excess and unauthorized use where a waiver of excess or unauthorized grazing use fees may be considered are those instances that occur after this rule has become effective.

The final rule carries forward the proposed amendment to 36 CFR 222.50(h) to provide the authorized officer an option to waive the excess or unauthorized grazing use fees when the use is a result of unforeseen or uncontrollable circumstances, and when certain conditions set forth in the regulation are met.

The final rule carries forward the removal of the reference in the current regulation to the fee being adjusted by the same indexes used to adjust the regular fee, as well as the removal of the reference to an unvalidated permit and replaces it with the four most common situations in which the Forest Service encounters excess or unauthorized use.

There were a few commenters who expressed views that the Agency was proposing to not charge for any excess and unauthorized grazing use. Therefore, language has been added to the final rule to highlight the relationship to 36 CFR 222.50(a) and make it clear that a grazing fee shall be charged for all grazing use. As always, the exact rate applied to the grazing use depends on whether such use is authorized or not. Title 36 CFR 222.51, 222.52, 222.53, and 222.54 describe the grazing fees charged for authorized grazing use and are not affected by this rulemaking. The excess and unauthorized use rate is applied to all grazing use made without authorization, which is described within 36 CFR 222.50(h). The final rule allows the option to waive the excess and unauthorized grazing use fee when the use was a result of unforeseen or uncontrollable circumstances and all three of the specified conditions set forth in the regulation at 36 CFR 222.50(h) are met.

Commenters expressed concern that the permittee or non-permittee would not be contacted or that they would not be required to take corrective action relative to excess or unauthorized use. Therefore, the final rule language was updated to make it clear that livestock would have to be removed by the permittee or non-permittee within the timeframe required by the authorized officer. The clarification was added to the first condition of the criteria that is required to be met before a line officer can consider a waiver of fees for excess or unauthorized use. This change is also warranted as the Agency would be unable to determine if conditions #2 and #3 of the criteria have been met if the livestock remains on NFS lands.

Commenters expressed concern and confusion over condition #4 of the criteria as presented in the proposed rule. Some commenters felt that it is never in the interest of the United States to allow excess and unauthorized use to occur free of charge, while other commenters felt that condition #4 allowed for too much discretion and would result in inconsistency across the Agency. Due to the comments received and internal Agency discussion of a similar nature, condition #4 of the criteria was removed to facilitate the clear and consistent implementation of the rule.

Some commenters expressed concern about using the terms ''significant'' in condition #2 and ''significantly'' in condition #3 of the criteria. The basis of the concern is related to how ''significance'' would be determined on the ground in each excess and unauthorized use case. For the purposes of the final rule, the meaning of the terms ''significant'' and ''significantly'' are unrelated to the terms as used in the context of the National Environmental Policy Act of 1969. Instead, the Forest Service uses the term ''significant'' in condition #2 in the ordinary meaning of the word to help field staff differentiate between a use level that is undetectable or slightly used versus a level that exceeds grazing standards that are common for the area. The level of forage use that could be considered significant will vary across the National Forest System lands because different resource conditions exist across those lands at any given time. The Forest Service authorized officer will consider the site-specific conditions to inform the decision as to whether the amount of forage consumed as a result of excess or unauthorized grazing was significant.

The term ''significantly'' is used in condition #3 of the criteria to help field staff differentiate between levels of impacts resulting from excess or unauthorized use. The term is used in the ordinary sense or meaning of the word to allow Forest Service personnel to differentiate between impacts that are undetectable or minor in nature where no restoration or intervention efforts are needed versus impacts that impair the management and viability of the area, creating a situation where rehabilitation or intervention is needed, or other management options need to be employed.

Comments on the Proposal

General Comments

Comments expressed a wide range of opinions—both strongly for and against—the proposed rule. Comments expressing support for the proposed rule stated that it was a fair means to deal

with excess and unauthorized use that was a result of circumstances beyond the livestock owner's control, or otherwise due to unforeseen or uncontrollable circumstances. Other comments, however, opposed various provisions of the proposed rule, expressing concern that the revisions could: (1) reward intentional bad behavior; (2) result in increased overgrazing and greater resource damage; (3) result in increasing excess and unauthorized use; (4) result in less incident documentation.

Response: The Agency notes the general comments in support of or in opposition to the rule. The Agency has carefully considered the input from the public, other government entities, and Tribes and has made several adjustments to the final rule to address the concerns described above. These changes are described in more detail below and include, for example, changing the terminology from ''non-monetary settlement'' to an option to ''waive'' the excess and unauthorized use fees. Throughout the rulemaking process, the Agency's goal has been to develop a final rule that enables the Agency to have an option to not charge for excess and unauthorized use when it is minimal and due to unforeseen or uncontrollable circumstances and not due to negligence of the livestock owner. The final rule achieves this goal and is consistent with the practices of the Bureau of Land Management and recommendations of the GAO July 2016 report.

The Agency's final rule does not eliminate or modify the existing policy to charge for all grazing use, to possibly take administrative action against a grazing permit, or to apply the penalties at 36 CFR part 261. Instead, it adds the option to waive the excess and unauthorized use fees when the use was due to unforeseen and uncontrollable circumstances and the three criteria in the final rule are met. Further, the Agency will continue to comply with the requirements of all applicable laws and regulations and continue to document and charge for all livestock grazing use and may waive the associated fees under limited circumstances when all the required criteria are met.

The three required criteria that must be met are: (1) The excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer; (2) The forage consumed by the excess or unauthorized use is not significant; and (3) National Forest System lands have not been damaged significantly by the excess or unauthorized use.

Criterion #1 (so long as criterions 2 and 3 are also met) will isolate the excess or unauthorized livestock use to the single unforeseen or uncontrollable event.

Criterion #2 will ensure that forage use made during the excess or unauthorized use is considered. It will help field staff differentiate between a use level that is undetectable or slightly used versus a level that exceeds grazing standards that are common for the area to determine if a fee waiver may be an available option or not (so long as criterions 1 and 3 are also met).

Criterion #3 will ensure that the excess or unauthorized livestock use did not damage other aspects of the National Forest System lands. It is intended to allow staff to differentiate between impacts that are undetectable or minor in nature where no restoration or intervention efforts are needed versus impacts that impair the management and viability of the area, creating a situation where rehabilitation or intervention is needed, or other management options need to be employed. This criterion along with criterions 1 and 2 are intended to act in concert when reviewing the site-specific information to determine if the waiver of the excess and unauthorized use fee would be appropriate.

Comment: Some commenters suggest that there is a need to require direction to record all incidents of excess and unauthorized grazing use.

Response: The U.S. Forest Service has determined the development of policy to document all occurrences of excess and unauthorized grazing use was best resolved through internal administrative direction. Therefore, in April 2019, the Washington, DC office sent a letter to the Regional Foresters, directing documentation and billing for all cases of excess and unauthorized grazing use that equals or is greater than one head month of use. All documentation is to be filed in the 2230 grazing permit files and database for excess use and is to be documented and resolved in cooperation with law enforcement personnel for unauthorized use. The final rule provides an option for waiver of excess or unauthorized use fees when excess and unauthorized grazing use is due to unforeseen or uncontrollable circumstances, and cases will continue to be documented in the 2230 grazing permit files and database, even if no excess or unauthorized use fees were charged.

In December 2020, the U.S. Forest Service released the proposed rangeland management directives (Forest Service Manual (FSM) 2200 and Forest Service Handbook (FSH) 2209.13 and 2209.16). The proposed rangeland management directives include updated requirements and direction for documenting all excess and unauthorized grazing use and working with the livestock owner to resolve the incident. A checklist has been developed to be included as an exhibit in the final directives. The exhibit will serve as an example of how to document occurrences of excess and unauthorized use and if the three criteria have been met to allow the authorized officer the option to waive the fees. Future updates to the Rangeland Information Management System database are being considered to further aid in tracking and future reporting of excess and unauthorized grazing use and any waivers of associated fees.

Comment: Some commenters suggest the Forest Service comply with the existing regulations instead of amending regulations to allow for not charging an excess and unauthorized use fee.

Response: The GAO report recommended the Forest Service either amend the regulations to allow the option to resolve excess and unauthorized grazing use without charging fees in some instances or follow the existing regulations by determining and charging a grazing use penalty for all unauthorized and excess use. Given the vast amount of land covered, and the wide array of natural and unnatural events that may occur across a variety of landscapes, the Agency believes it is important to have reasonable flexibility which allows for a commonsense approach to resolving certain instances of excess and unauthorized grazing use. In limited circumstances, when the use occurs because of unforeseen or uncontrollable circumstances, having the ability to waive excess and unauthorized grazing use fees will help to quickly resolve the issue while maintaining cooperative relationships. Therefore, the Forest Service amends its regulations at 36 CFR 222.50(h) to include an option for waiving the excess and unauthorized use fees when excess or unauthorized grazing use is a result of unforeseen or uncontrollable circumstances and meets all three conditions identified in the rule.

Comment: Some commenters requested that the excess and unauthorized grazing penalty structure be revised, and fees increased to better deter excess and unauthorized grazing use.

Response: The U.S. Forest Service determined that the issue of revising the excess and unauthorized grazing fee was best resolved through internal administrative direction. The grazing penalty structure is addressed administratively through revision of the Forest Service Handbook (FSH) 2209.13 which was published December 18, 2020, for public comment (85 FR 82432). The FSH provides direction for calculating and assessing the annual excess and unauthorized grazing use fees. The proposed FSH 2209.13 includes updates to the excess and unauthorized use rate which reflect the commercial value of forage.

Comment: Some commenters suggested avoiding the term ''non-willful'' or better define the term and differentiate between ''non-willful'' and ''willful''.

Response: The U.S. Forest Service is no longer including the term ''non-willful'' within the rule language and the definitions section as finalized, thus eliminating confusion over any perceived requirement to assess the intent of the livestock owner. Instead, the terms unforeseen and uncontrollable are used within criteria #1 to better articulate what circumstances must exist for the authorized officer to consider waiving excess and unauthorized grazing use fees.

The Forest Service will rely upon the ordinary meaning of the terms unforeseen and uncontrollable. As defined by the Oxford Languages Dictionary, unforeseen is an adjective meaning ''not anticipated or predicted'', ''unplanned'', ''unexpected''. As defined by the Oxford Languages Dictionary, uncontrollable is an adjective meaning ''not controllable'', ''out of control'', ''unmanageable''.

It is the livestock owner's responsibility to keep livestock off National Forest System lands when they are not permitted and authorized to make use of those lands. However, there are circumstances that occur beyond the control of the livestock owner that cannot be predicted. For example, when a predator attacks a band of sheep causing the sheep to scatter and move outside the authorized routing pattern or allotment area. This example demonstrates how the predation event caused the sheep to be in areas that were not authorized, resulting in excess use. The predator attack was unforeseen and uncontrollable by the permittee and the Forest Service.

Another example would be when an automobile accident occurs and damages a private landowner's fence. The private landowner's llamas get out and are grazing on National Forest System lands. This example demonstrates how the automobile accident damaged the fence, allowing the llamas to get out and graze on National Forest System lands, resulting in unauthorized use. The automobile accident was unforeseen and uncontrollable by the landowner and the Forest Service.

The terms unforeseen or uncontrollable are intended to strike a balance between providing the Forest Service reasonable flexibility when those types of situations arise while also ensuring undesirable behavior and/or repeat instances of excess and unauthorized use are addressed to reform the behavior and deter any future instances.

Comment: Some commenters suggested that the rule should not apply to National Grasslands or grazing associations because grazing associations are issued grazing agreements (which the commenter suggested are not a type of term grazing permit). They suggested the rule is not consistent with the Bankhead-Jones Farm Tenant Act of 1937 or that a specific rule should be written that describes how grazing associations would apply the rule when managing their members.

Response: Authority for managing the National Grasslands comes from Title III of the Bankhead-Jones Farm Tenant Act (BJFTA) of 1937, as amended. The portions of Title III that are most applicable are found in Sections 31 (7 U.S.C. 1010) and 32(b) and (f) (7 U.S.C. 1011). In these provisions, the Secretary of Agriculture was granted authority ''[t]o make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the purposes of this subchapter, in order to conserve and utilize it or advance the purposes of this subchapter'' (7 U.S.C. 1011(f)). This includes the regulations found in 36 CFR part 222.

National Grasslands are part of the National Forest System per Section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609). Management of the National Grasslands as part of the National Forest System must be conducted in a manner that is consistent with the regulations that apply to National Forest System lands which does include the revised regulations resulting from this final rulemaking.

Regarding the comment that ''a specific rule should be written that describes how grazing associations would apply the rule when managing their members,'' a separate rule specific to National Grasslands is not needed. As stated above, the management of the National Grasslands as part of the National Forest System must be conducted in a manner that is consistent with the regulations that apply to all National Forest System lands. The Forest Service enters into grazing agreements with grazing associations which are a type of term grazing permit (36 CFR 222.3(c)(1)). The Forest Service applies law, regulation and policy to the association when administering the grazing agreement. The grazing associations are then responsible for managing their members' livestock grazing on the lands identified in the grazing agreement. How a grazing association manages its members is articulated in the association's rules of management (ROM). There may be times where an association's ROM might be more restrictive than Federal law, regulation, or Forest Service policy and/or procedure, but they cannot be less restrictive. This includes the revised regulations related to excess grazing use resulting from this final rulemaking. This means that grazing associations are accountable to the Forest Service for any excess use made by their members, and the Forest Service may waive the fee for the association if all three conditions are met. Alternatively, if any of the criteria are not met, then the Forest Service will charge the association for the grazing use.

There are some allotments where direct permittees and grazing associations are authorized to graze livestock in common. In those instances, the Forest Service will apply this rule to all parties holding grazing permits, whether they are direct grazing permits or grazing permits in the form of a grazing agreement.

Regulatory Certifications

Regulatory Planning and Review

For rules designated as significant by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget, Executive Order (E.O.) 12866, as supplemented by E.O. 13563, directs agencies to conduct a regulatory impact analysis, including an assessment of costs and benefits (*i.e.,* cost-benefit analysis) of the regulatory action and its alternatives, and select regulatory approaches that maximize net benefits to both the Government and the public regarding economic impacts, the environment, public health and safety, distributive impacts, and equity considerations.

Executive Order 13563 emphasizes the importance of quantifying both costs

and benefits, of reduced costs, of harmonized rules, and of promoting flexibility. Analysis is required to assess both the costs and benefits of the intended regulation, recognizing quantifiable analysis is not always possible, but that a reasoned determination be made that the benefits justify the regulatory costs. The final rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

Costs and benefits can accrue to ranchers, private industry, the agency, and to the public. Generally, industry could benefit from fewer penalty fees for excess and unauthorized use determined to meet the three circumstances identified in the rule. The agency could benefit from less time and resources spent assessing and collecting the penalty fees.

The Agency conducted a regulatory impact analysis for the final rule to amend existing regulations to allow for excess and unauthorized grazing fees to be waived if the use is a result of ''unforeseen'' or ''uncontrollable'' circumstances, a departure from existing policy which doesn't formally allow for such considerations (36 CFR part 222, subpart C). This analysis considers costs and benefits to the agency (Government), livestock operators, and the public.

The regulatory impact analysis compares impacts between the current and final rules. Savings to industry are minimal but seen as a benefit. The savings are estimated from an average cost of fees assessed multiplied by the average number of excess or unauthorized use cases eligible for fee waivers per year. To determine the anticipated number of excess or unauthorized use cases eligible for fee waivers under the final rule, the agency used data from 2017 to 2020 on the number of livestock, the duration the livestock were on National Forest System lands, and the total amount of head months associated with the excess or unauthorized use cases.

The cost-benefit analysis identifies the potential economic costs and benefits associated with the final rule. Changes in benefits and cost savings result from (1) waived fees for excess and unauthorized use and (2) associated changes in processing times for the waivers and fees. Baseline conditions are equal to operations under existing regulations and policy.

While the regulations set forth in 36 CFR part 222 apply to all National Forest System land, a review of grazing records from the last four years show that permit-holders and land managers in the western United States would be most impacted by the rule change. In 2020 alone, authorized livestock in the Forest Service's Northern (Region 1), Rocky Mountain (Region 2), Southwestern (Region 3), and Intermountain (Region 4) regions accounted for 88 percent of total authorized use on National Forest System lands. These regions encompass the states of Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. Though excess and unauthorized use can occur on any National Forest System lands, by permittees and non-permittees, it is important to understand the magnitude of grazing and distribution across the land. The rule is not expected to change the production of forage or livestock; therefore, economic impacts from grazing on National Forest System lands are not expected to change. We do not expect the excess or unauthorized use to change, only the penalties would change for those uses that meet the conditions to have the fees waived.

It is unlikely the rule will adversely affect the natural resources or visiting public, as a condition for the rule to apply is that ''the forage consumed by the excess or unauthorized use was not significant, and National Forest System lands had not been damaged significantly by the excess or unauthorized use.''

Under baseline conditions, the cost is the time for industry and the agency to process bills for collection from excess or unauthorized use. Each reported case of excess or unauthorized use requires a bill for collection to be processed. In addition to the billing and collection, Forest Service staff also need to assess the damage and determine the extent of the bill.

Overall, we do not expect costs to industry, the agency, or the public from the final rule. The time to process each bill for collection will not change. The costs will likely be lower than the baseline condition because less time would be spent overall on bills for collection because some cases could have fees waived.

As a whole, the agency believes that, though benefits have not been monetized, the rule will have positive net benefits due to the improved relationships and more timely resolution of excess and unauthorized use to minimize resource damage.

Energy Effects

The USDA has considered the final rule in the context of Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* issued May 18, 2001. The USDA has determined the final rule does not constitute a significant energy action as defined in Executive Order 13211. Therefore, a statement of energy effects is not required.

E-Government Act

The USDA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis (CRIA) was conducted in accordance with USDA Departmental Regulation (DR) 4300–4, to determine if the implementation of the final rule would have disproportionate effects or adverse impacts on employees or program beneficiaries, because of membership in protected groups identified in USDA DR 4300–4 (regarding Civil Rights) and DR 5600–002 (regarding Environmental Justice), particularly women, ethnic and racial minorities, and people with disabilities. The final rule has been analyzed to ensure compliance with USDA's DR 4300–4, and it is determined that no adverse impacts on protected groups are expected as a result of the implementation of the final rule.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as 'not a major rule' as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule would provide an option for the authorized officer to waive the excess or unauthorized grazing use fee when the use met the following criteria: (1) the excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer; (2) the forage consumed by the excess or unauthorized use is not significant; and (3) National Forest System lands have not been damaged significantly by the excess or unauthorized use. Agency regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement, as well as in a decision memo, rules,

regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The amendment to §§ 222.50(h) and 222.1(b) addresses the penalty for excess and unauthorized grazing actions taken on National Forest System land and provides a definition for a term used in the amended language. The final language removes reference to an unvalidated permit and replaces it with the four most common situations that the Forest Service considers excess or unauthorized use, which is not intended to be an exclusive list. This final rule fits within this category because it is a service-wide administrative action regulating financial policy and fees limited to determination of waiver of excess or unauthorized use fees. Moreover, an administrative action that regulates financial policy and waiver of fees in a limited situation is not authorizing any ground disturbing activities, nor is it authorizing any activities in areas where there are extraordinary circumstances that exist per 36 CFR 220.6(b). Thus, the Agency has concluded that the final rule falls within this category of actions and that no extraordinary circumstances exist which would require the preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

A certification must include, at a minimum, a description of the affected entities and the impacts that clearly justify the ''no impact'' certification. The agency's reasoning and assumptions underlying its certification should be explicit to obtain meaningful public comment and thus receive information that would be used to re-evaluate the certification.

For the changes to 36 CFR part 222, subpart C, this rule affects permittees classified under the North American Industry Classification System (NAICS), as follows:

- NAICS Code 112410, Sheep Farming
- NAICS Code 112111 Beef Cattle Ranching and Farming

Most Forest Service grazing permittees would be considered small entities under SBA standards (owner-operators, some with LLC. designations, and others operating under an agreement with Grazing Associations). The central purpose of the final rule is the flexibility to informally resolve excess and unauthorized grazing incidents, that are a result of unforeseen or uncontrollable circumstances by waiving the excess or unauthorized grazing penalties. Informal resolution involves the permittee or non-permittee removing the livestock following a phone call from or face-to-face conversation with the authorized officer. Since the excess or unauthorized grazing penalties would be waived, any settlement or action would be of the nonmonetary nature and reduce the administrative burden on livestock operators by allowing for a waiver of fees of a situation that would typically require an administrative process to resolve.

The cost savings are due to anticipated changes in fees paid by the industry to the agency as a result of fee waivers for eligible cases of excess or unauthorized use. The cost savings are considered transfer payments. Cost savings, though minimal, would result from waived fees and reduced time assessing and processing bills. The amount of time to process a fee waiver and process a bill for collection would be the same up to the point where the Forest Service either decides to waive the fees or issue a bill for collection. The agency and industry are expected to experience cost savings from the reduced time processing and collecting excess and unauthorized use fees. While the cost savings to industry from the fee waivers would result in less government revenue, this is not planned government revenue that benefits the public. The fees are a penalty. The goal is full compliance with existing laws, meaning no fees assessed for excess and unauthorized use.

As such, the Chief of the Forest Service certifies that this rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Federalism

The Agency has considered the final rule under the requirements of E.O. 13132, *Federalism.* The Agency has determined that the final rule conforms with the federalism principles set out in this executive order; would not impose any compliance costs on the states; and would not have substantial direct effects on the States, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that the final rule does not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

The Forest Service considered this final rule in compliance with E.O. 13175, Consultation and Coordination with Indian Tribal Governments. On October 30, 2020, the agency initiated a 120-day consultation period. While consultation was ongoing, the comment period for this rule concluded on February 27, 2021. The Forest Service also considered input from Tribes received after this period. Two federally recognized Tribes accepted the invitation to consult and submitted written material on the rule.

One Tribe expressed support for the proposed rule, and one Tribe expressed concern that the rule would encourage excessive damage and degradation to our fragile ecosystems.

In response, the Forest Service maintains and reiterates its commitment to charge for all grazing use and enforce its grazing regulations. The final rule is of limited scope and amends the Forest Service grazing regulation to merely provide the authorized officer an option to waive the excess and unauthorized use fee only if all 3 criteria within the regulation are met. Of particular applicability is criteria #3 which requires that only those instances of excess or unauthorized use that did not significantly damage National Forest System lands could be considered for a waiver. All other instances would be charged for along with other administrative actions or penalties depending upon the circumstances.

The Agency acknowledges that it shares a government-to-government relationship with Tribes that differs from its relationship with the general public. The final rule does not change the Forest Service's Tribal consultation obligations.

No Takings Implications

The Agency has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Agency has determined that the final rule would not pose the risk of a taking of private property.

Civil Justice Reform

The Forest Service has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* The Agency has

not identified any State or local laws or regulations that conflict with this regulation or that would impede full implementation of this rule. Nevertheless, if such conflicts were to be identified, the final rule will preempt the State or local laws or regulations that are found to be in conflict. However, in the case of such conflict, (1) no retroactive effect will be given to this final rule; and (2) USDA will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Agency has assessed the effects of the final rule on State, local, and Tribal governments and the private sector. The final rule would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 222

Grazing and Livestock Use on the National Forest System, Mediation of Term Grazing Permit Disputes, Grazing Fees, Management of Wild Free-Roaming Horses and Burros.

Therefore, for the reasons set forth in the preamble, part 222, subparts A and C, of title 36 of the Code of Federal Regulations is amended as follows:

PART 222—RANGE MANAGEMENT

Subpart A—Grazing and Livestock Use on the National Forest System

■ 1. Revise the authority citation for subpart A to read as follows:

Authority: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331–1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

■ 2. In § 222.1, revise paragraph (b) to read as follows:

§ 222.1 Authority and definitions.

* * * * *

(b) *Definitions.*

Allotment means a designated area of land available for livestock grazing.

Allotment management plan means a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs, and objectives as determined for the lands, involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

Base property means land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

Cancel means action taken to permanently invalidate a term grazing permit in whole or in part.

Grazing permit means any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) Temporary grazing permits for grazing livestock temporarily and without priority for reissuance.

(ii) Term permits for up to 10 years with priority for renewal at the end of the term.

Land subject to commercial livestock grazing means National Forest System lands within established allotments.

Lands within the National Forest in the 16 contiguous western States means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

Livestock means animals of any kind kept or raised for use or pleasure.

Livestock use permit means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

Modify means to revise the terms and conditions of an issued permit.

National Forest System lands means the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

Non-permittee means a person who owns or controls livestock and does not have a grazing permit to graze livestock on National Forest System lands.

On-and-off grazing permits means permits with specific provisions on range, only part of which is National Forest System lands or other lands under Forest Service control.

On-the-ground expenditure means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor, and material (or contract) costs, and on-the-ground supervision.

Other lands under Forest Service control means non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

Permittee means any person who has been issued a grazing permit.

Permitted livestock means livestock authorized by a written permit.

Person means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

Private land grazing permits means permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

Range betterment means rehabilitation, protection, and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

Range betterment fund means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

Range improvement means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) Non-structural which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) Structural which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) Permanent means range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) Temporary means short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

Suspend means temporary withholding of a term grazing permit privilege, in whole or in part.

Term period means the period for which term permits are issued, the maximum of which is 10 years.

Transportation livestock means livestock used as pack and saddle stock for travel on the National Forest System.

Subpart C—Grazing Fees

■ 3. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

■ 4. In § 222.50, revise paragraph (h) to read as follows:

§ 222.50 General procedures.

* * * * *

(h) The excess and unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. This rate is charged for unauthorized forage or forage in excess of authorized use and is separate from any penalties that may be assessed for a violation of a prohibition issued under 36 CFR part 261 or from an administrative permit action. This rate will apply to, but not be limited to, the following circumstances: excess number of livestock grazed; livestock grazed outside the permitted grazing season; livestock grazed in areas not authorized under a grazing permit and a bill for collection; or livestock grazed without a permit. Per paragraph (a) of this section, a grazing fee shall be charged for each head month of livestock grazing or use. This includes any excess or unauthorized grazing use. The authorized officer may then waive monetary fees for excess or unauthorized grazing use only when all three of the following conditions are met:

(1) The excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee, and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer;

(2) The forage consumed by the excess or unauthorized use is not significant; and

(3) National Forest System lands have not been damaged significantly by the excess or unauthorized use.

* * * * *

Dated: June 6, 2022.

Randy Moore,

Chief, USDA Forest Service.

[FR Doc. 2022–12453 Filed 6–8–22; 8:45 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2021–0949; FRL–9532–02–R5]

Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati, Ohio-Kentucky Area to Attainment of the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Cincinnati, Ohio-Kentucky area (Area) is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and is acting in accordance with a request from the Ohio Environmental Protection Agency (OEPA) to redesignate the Ohio portion of the Area to attainment for the 2015 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Area includes Butler, Clermont, Hamilton, and Warren Counties in Ohio and parts of Boone, Campbell, and Kenton Counties in Kentucky. OEPA submitted the request for redesignation for the Ohio portion of the area (Butler, Clermont, Hamilton, and Warren Counties) on December 21, 2021. EPA is also approving, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2015 ozone standard through 2035 in the Area. Finally, EPA is approving the state's 2026 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) motor vehicle emission budgets for the Ohio portion of the Area for transportation conformity purposes. EPA received comments on its February 11, 2022, proposed rule. After considering comments received, EPA is finalizing this action as proposed.

DATES: This final rule is effective on June 9, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0949. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility 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. We recommend that you telephone Olivia Davidson, Environmental Scientist, at (312) 886–0266 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, *davidson.olivia@epa.gov.*

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

I. Background Information

This rule takes final action on the December 21, 2021, submission from OEPA requesting redesignation of the Ohio portion of the Cincinnati area to attainment for the 2015 ozone standard. The background for this action is discussed in detail in EPA's Notice of Proposed Rulemaking (Proposal), dated February 11, 2022 (87 FR 7978). In the Proposal, we noted that, under EPA regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is equal to or less than 0.070 parts per million, when truncated after the third decimal place, at all of the ozone monitoring

sites in the area. (*See* 40 CFR 50.19 and appendix U of part 50.) Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E). The Proposal provides a detailed discussion of how Ohio has met these CAA requirements.

As discussed in the Proposal, quality-assured and certified monitoring data for 2019–2021 show that the Area has attained the 2015 ozone standard. In the maintenance plan submitted for the Area, Ohio has demonstrated that the ozone standard will be maintained in the Area through 2035. Finally, Ohio has adopted 2026 and 2035 VOC and NO_X motor vehicle emission budgets for the Area that are supported by Ohio's maintenance demonstration, which EPA is also approving in this action.

II. Public Comments

EPA provided a 30-day review and comment period for this action in the Proposal. The comment period ended on March 14, 2022. EPA received adverse comments, which are summarized and addressed below.

Comment: The commenter contends that EPA has not adequately demonstrated that the observed decrease in emissions is attributable to enforceable emission reductions. The commenter argues that some of the emission reduction measures that EPA relies on were in place well before 2019, *i.e.,* that the measures themselves were insufficient to get the area to attainment because even after implementation of those measures in 2014 and 2017, the area continued to violate the NAAQS, and did not come into attainment until the 2019–2021 time period. The commenter cites the Cross State Air Pollution Rule (CSAPR) Update, Tier 3 Emission Standards, Category 3 Marine Diesel Engine Standards, and, more generally, several mobile source control measures that were ''fully implemented'' prior to 2014.

Response: EPA disagrees with the commenter's contention that EPA has not adequately demonstrated that the observed decrease in emissions is attributable to permanent and enforceable reductions in emissions, per CAA section 107(d)(3)(E)(iii).[1] As stated in EPA's long-standing guidance on redesignations (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992), we interpret this provision to mean that ''[a]ttainment resulting from temporary reductions in emission rates (*e.g.,* reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.'' Calcagni Memo at 4. EPA's guidance instructs that the showing under CAA section 107(d)(3)(E)(iii) ''should estimate the percent reduction . . . achieved from Federal measures . . . as well as control measures that have been adopted and implemented by the State,'' and that overall, we must be able to ''reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.'' *Id.* EPA's correlation of improvements in air quality with an identification of permanent and enforceable state and Federal measures, along with the estimated reductions in precursor emissions that cause ozone pollution which are attributable to each measure over the relevant time period, has long been one methodology to demonstrate compliance with CAA section 107(d)(3)(E)(iii) and has been upheld in court. *See Sierra Club* v. *EPA,* 774 F.3d 383, 393–95 (7th Cir. 2014). As noted by the court in *Sierra Club,* ''the CAA does not require EPA to prove causation to an absolute certainty. Rather in accord with its own internal guidance . . . EPA had to 'reasonably attribute' the drops in ozone to permanent and enforceable measures. Only if EPA's path cannot 'be reasonably discerned,' or if EPA relied on factors 'that Congress did not intend it to consider' or 'fail[ed] to consider an important aspect of the problem,' will we conclude that EPA acted arbitrarily or capriciously.'' *Id.* at 396.

The commenter is correct that some of the measures cited by EPA as contributing to the area's attainment, including the CSAPR Update, Tier 3 Emissions Standards, and Category 3 Marine Diesel Engine Standards, were in place prior the area's attainment. However, that does not mean that these control measures did not contribute to and were not reasonably attributable to the area's attainment. Control measures do not achieve all emission reductions in the first year that those measures are implemented. State and Federal emission reduction requirements continue to apply well past the initial implementation year and continue to achieve reductions that contribute to improving, and in this case, attaining, air quality. Some mobile source measures in particular will continue to achieve cumulative emission reductions well past the initial implementation date because they achieve additional reductions with fleet turnover, *i.e.,* as older on-road vehicles and non-road engines are replaced with newer ones that meet more stringent emission standards.

On September 7, 2016, EPA finalized an update to CSAPR requiring further reductions in NO_X emissions from electric generating units (EGUs) beginning in May 2017. This final rule was projected to result in a 20% reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels, with continued EGU reductions each year. Emissions of NO_X from EGUs in Ohio have reflected the continued emission reductions measures, as NO_X emissions from EGUs in Ohio have been reduced by 29 percent statewide from 2016 through 2020. The continued application of these reductions in Ohio and upwind states was a key contributor to improved and attaining air quality in Cincinnati. In addition, EPA finalized the revised CSAPR Update on April 30, 2021 (86 FR 23054), and that rule required additional reductions of almost 10,000 tons of ozone season NO_X in Ohio,[2] equivalent to a 50% reduction in EGU emissions, effective by the 2021 ozone season, *i.e.,* one of the years in the design value period that shows attainment.

With respect to the mobile sources measures cited by the commenter, the commenter incorrectly states that the Tier 3 Emission Standards for Vehicles were fully implemented by 2017. In fact, the standards, which are expected to reduce NO_X and VOC emissions by 80%, first took effect in 2017, and will continue to be phased in through 2025, after which additional reductions will continue to be achieved through fleet

[1] The commenter states that it does not support EPA's proposal to redesignate the Area because OEPA has failed to demonstrate that CAA section 107(d)(3)(E)(iii) is met. However, as that statutory provision clearly states, the Administrator may not promulgate a redesignation of a nonattainment area unless ''the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.'' On its face, the statute permits EPA to not only consider Ohio's submittal and demonstration, but also any other information EPA has regarding emission reductions in the area.

[2] *See* OEPA's *Redesignation Request and Maintenance Plan for the Ohio Portion of the Cincinnati, OH-KY 2015 Ozone Nonattainment Area,* contained in docket EPA–OAR–R05–2021–0949 for the proposed rule that published February 11, 2022 (87 FR 7978) approving the redesignation request, page 43.

turnover. Similarly, the Category 3 Marine Diesel Engine Standards, which will reduce NO_X emissions from new engines by 80%, began in 2016, and emission reductions will continue to occur at least through 2030 as older engines are replaced. These standards, in conjunction with rules reducing emissions from international and in-use vessels covered by MARPOL Annex VI, are estimated to result in NO_X emissions reductions in the United States of 1.2 million tons per year (tpy). Reductions from both Tier 3 Emissions Standards and Category 3 Marine Diesel Engine Standards first took effect between the nonattainment period and the attainment period but have been achieving emission reductions every year since they were first implemented. EPA reasonably attributed the improved air quality in the Cincinnati area to these significant control measures, even if those measures did not immediately and independently cause the Area to attain the 2015 ozone NAAQS.

In addition, there are numerous other permanent and enforceable control measures that resulted in emission reductions that contributed to and are reasonably attributable for the Area's attainment. These include the New Source Performance Standards (NSPS) for Residential Wood Heaters, of which Phase 2 began in 2020 and is projected by EPA to achieve 9,265 tons of VOC reductions annually when fully implemented; the Control of Hazardous Air Pollutants from Mobile Sources, which EPA estimates will reduce VOC emissions by over 1 million tons by 2030; and the Emissions Standards for Locomotives and Marine Compression-Ignition Engines, first promulgated in 2008, which EPA projected to reduce NO_X emissions by 800,000 tons in 2030 which will continue to increase in later years as fleet turnover is completed.

None of these control programs which rely upon the replacement of older, more polluting technology with newer technology that meets more stringent emissions standards can be considered fully implemented upon initial adoption of the emission standard. The rules are considered fully implemented when the fleet has turned over and the new technology is in widespread use. Additional reductions from these programs continue to be generated throughout the implementation period as newer units replace older, more polluting units.

In reviewing Ohio's request, EPA applied the same methodology as it has for the many redesignated areas across the country over the last three decades. The Proposal discussed at length the various state and Federal promulgated measures and the estimated precursor emission reductions impacts attributable to each of those measures. The commenter does not dispute the permanence or enforceability of any of the measures listed by EPA, nor does the commenter refute that the measures obtained the estimated reductions cited by EPA.

Comment: The commenter argues that EPA's determination that improved air quality during 2019–2021 was caused by permanent and enforceable emissions reductions program is unlawful, arbitrary, and capricious because EPA did not evaluate whether decreased economic activity from the COVID–19 pandemic caused improved air quality in the Area. The commenter contends that EPA should not rely solely on data from 2019, 2020 and 2021 when the Area came into attainment, due to COVID–19 effects on power plant emissions and automobile travel being the likely cause of the reductions rather than the cited enforceable reduction measures. Further, the commenter argues that the fact that EPA considered the impact of the pandemic in the Agency's proposal to redesignate Detroit, Michigan demonstrates that it was unreasonable for EPA to ignore the potential impact of the pandemic on Cincinnati's attainment.

Response: EPA does not agree that our determination that the Area's attainment is due to permanent and enforceable reductions is arbitrary and capricious. As previously discussed, we think that OEPA's submission and the rationale provided in EPA's Proposal establishes that the Area's attainment is due to the cited permanent and enforceable reductions. However, in response to this comment, EPA has performed an additional analysis focused on emission trends in point sources and mobile sources in the Cincinnati area. That analysis, discussed in detail below, confirms our determination.

The commenter highlighted nationally decreased power plant emissions during the COVID–19 pandemic recession beginning in 2020. Therefore, EPA evaluated the point source emissions from Butler, Clermont, Hamilton, and Warren Counties in Ohio, the counties that make up the Ohio portion of the Area, based on data from EPA's Emissions Inventory System (EIS) [3] Gateway. The point source reductions achieved from the nonattainment year 2014 through the attainment year of 2019 show NO_X and VOC emission reductions of 22 and 12 percent, respectively. Between 2019 (pre-pandemic) and 2020 (pandemic), NO_X point source emission were reduced by 0.4 percent. The vast majority of the emission reductions did not occur as a result of the pandemic.

EPA also analyzed the pandemic's impact on passenger and truck traffic in response to the commenter's assertion that automobile travel ''plunged'' in 2020 as a result of the pandemic. We found that, consistent with statewide trends, car traffic did decrease during the pandemic, but truck traffic increased. From mid-March 2019 to mid-March 2020, passenger and truck traffic in Hamilton County, the county which contains the Cincinnati city limits, were down 12 percent and 4 percent, respectively.[4] From mid-March 2019 to mid-March 2021, passenger traffic was down 19 percent, while truck traffic was up by 5 percent. Expanding this further, from mid-March 2019 to mid-March 2022, passenger traffic was down 12 percent while truck traffic was up by 9 percent. This pattern highlights several components of the United States' 'new normal' since the arrival of the COVID–19 pandemic. An Ohio statewide analysis by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) assesses the 'new normal' including monthly traffic impacts after the state of emergency was lifted on June 6, 2021, concluded overall traffic conditions in 2021 were decreased by a range of 3 to 7 percent, from June 2021 through January 2022, considering a monthly average. Separating between car and truck traffic, over the same time period, car traffic was decreased ranging from 5 to 9 percent, while truck traffic was increased from June 2021 through January 2022, ranging from 9 to 14 percent. In EPA's 2017 National Emissions Inventory (NEI), there were 31,762 tpy of NO_X attributed to heavy duty vehicles (HDV) in Clermont, Butler, Hamilton, and Warren counties and 38,564 tpy of NO_X attributed to light duty vehicles (LDV). Thus a 10% decrease in LDV Vehicle Miles Travelled (VMT) and a 10% increase in HDV VMT would be expected to lead to a small net decrease in onroad NO_X emissions for these counties of less than 1,000 tpy and corresponding to a change of less than 1 percent. Thus, assuming that vehicle traffic scales linearly with NO_X emissions, decreases in LDV VMT

[3] *See https://www.epa.gov/air-emissions-inventories/emissions-inventory-system-eis-gateway,* last accessed 3/24/2022.

[4] The data was acquired by the Ohio Department of Transportation (ODOT) Statewide Traffic Analysis website, *see https://app.powerbigov.us/view?r=eyJrIjoiZDRjZWRiNTktZGI2Ny00MzdjLTk1ZTYtNjAwNjUzZThlYjBlIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9.*

of between 3 and 19% paired with changes in truck VMT ranging from a 4% decrease to a 14% increase could lead to net NO_X change ranging from a decrease of approximately 8,600 tpy to an increase of approximately 3,300 tpy corresponding to a 12% decrease and a 5% increase respectively. As a result of these light duty and heavy duty VMT trends in opposite directions in the Cincinnati area it is not clear whether the COVID–19 lockdowns led to any significant net mobile NO_X reductions in this nonattainment area.

A similar analysis by OKI of the Ohio counties in the Area (Clermont, Butler, Hamilton, and Warren) included average weekday daily traffic in the OKI region from 2019 to 2021, from 20 (directional) Ohio Department of Transportation (ODOT) permanent traffic count stations (Table 1). The results highlight 2021 car traffic levels higher than 2020, but remaining approximately 7 percent below 2019 traffic levels, while truck traffic increased by 13 percent from 2019 to 2021, which OKI characterizes as the 'new normal'. Truck traffic did not experience the marked decrease beginning in March of 2020 at the outbreak of COVID–19 to the degree car traffic experienced, and by late June of 2020, truck traffic counts equaled June 2019 truck traffic counts, and exceeded them throughout the rest of 2020. This distinction is pertinent because EPA has found that in the upper Midwest, the majority of ozone exceedances occur in late May though late July. In the Area in particular, through the 2011–2021 time period, as ozone design values have decreased, ozone exceedances are more likely to occur later in the ozone season, and most likely in the months of June or July.[5] This time period would be within the same time frame that 2020 truck traffic returned to and exceeded 2019 truck traffic and hence, would have entered the 'new normal' conditions by the time the Area experiences its highest ozone values.

TABLE 1—AVERAGE WEEKDAY DAILY TRAFFIC COUNTS IN CLERMONT, BUTLER, HAMILTON, AND WARREN COUNTIES, 2019–2021

Vehicle type	2019 Average weekday daily traffic	2020 Average weekday daily traffic	2021 Average weekday daily traffic
Car	526,880	440,190	487,522
Truck	54,429	56,461	61,560

An analysis performed by OKI showed that VMT values are projected to increase throughout the maintenance period in the Area.[6] While EPA recognizes COVID–19 led to decreases in traffic and mobile source emissions, EPA would like to emphasize that the Area has continued to model decreases in on-road emissions despite modeled VMT increases, leaving the Area with an even larger margin when comparing on-road emissions in 2019 and emissions in 2026 and 2035 if the 'new normal' conditions prove to be temporary and traffic again rises beyond what is forecast in the maintenance plan.

Additionally, NEI trends data shows consistent decreases in both NO_X and VOC emissions in Ohio from highway vehicles since 2011, and off-highway NO_X and VOC emissions since 2002. With the many mobile source reduction measures in place in Ohio, EPA has no reason to believe that the reductions achieved are based on a brief period of decreased VMT in 2020 due to the COVID–19 pandemic.

As suggested by the commenter, EPA also performed an analysis similar to the one performed by Michigan's Environment, Great Lakes and Energy agency in their submittal requesting redesignation of the Detroit area for the 2015 ozone standard,[7] to evaluate whether the improvement in air quality was caused by temporary adverse economic conditions, especially the economic conditions associated with the COVID–19 pandemic which first impacted Ohio in 2020. EPA first considered point source reduction trends, noting that between 2005 and 2017, OEPA provided that Ohio's NO_X and VOC emissions decreased by 57 percent and 33 percent, respectively. Further, EPA compared the maximum 8-hour ozone concentrations against VMT and employment from 2014 through 2021. This highlighted that while employment levels were affected by COVID–19 and saw a decrease of employed individuals of almost 12,000 comparatively from the average 2019 levels to April of 2020, employment returned to 2019 levels by July 2020, according to Bureau of Labor and Statistics (BLS) Quarterly Census of Employment and Wages.[8] Employment levels continued to increase through 2021, and while the analysis showed a correlation between VMT and employment in the Area, no direct correlation between these economic indicators and the high ozone values was identified. The VMT and emissions values generated by OKI using EPA's MOVES3 model indicate increasing VMT and decreasing emissions from the nonattainment year of 2014, through the attainment year of 2019, the interim year of 2026, and the end year of 2035. Further, under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to any new air quality violations, increase the frequency or severity of any existing air quality problems, or delay timely attainment or any required interim emissions reductions or any other milestones.

Ohio's maintenance plan includes NO_X and VOC motor vehicle emissions budgets (budgets) for the Area for 2026, the interim year, and 2035, the last year of the maintenance period (Table 2). The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the Area, will provide for attainment or maintenance. These budgets represent the projected 2026 and 2035 on-road emissions plus a safety margin and are consistent with maintenance of the 2015 ozone NAAQS, which is described below. Detailed information on the transportation

[5] *See https://www.epa.gov/outdoor-air-quality-data/air-data-ozone-exceedances,* last accessed 3/29/2022.

[6] *See* OEPA's December 21, 2021, submittal contained in the docket for this action.

[7] The proposed approval to redesignate the Detroit, Michigan area to attainment of the 2015 Ozone Standards published on March 14, 2022 (87 FR 14210).

[8] *See www.bls.gov/cew/.* Last accessed March 22, 2022.

conformity program can be found in our Proposal.

TABLE 2—2026 AND 2035 BUDGETS FOR THE OHIO PORTION FOR THE 2015 OZONE NAAQS MAINTENANCE AREA

[Tons per summer day, TPSD]

Pollutant	2026 Budget	2035 Budget
NO_X	14.15	10.58
VOC	25.30	18.98

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. Further, the transportation conformity regulations allow states to allocate all or a portion of a documented safety margin to the motor vehicle emissions budgets for an area (40 CFR 93.124(a)). Ohio is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2026, Ohio is allocating 1.85 TPSD and 3.30 TPSD of the VOC and NO_X safety margins, respectively. In 2035, Ohio is allocating 1.38 TPSD and 2.48 TPSD of the VOC and NO_X safety margins, respectively. Since only a part of the safety margin is being used, maintenance requirements are still easily met. Once allocated to on-road mobile sources, these safety margins will not be available for use by other sources.

EPA recognizes the difficulties in assessing the impacts of the COVID–19 pandemic on ozone precursor emissions and ozone design values and the economic disparities from the COVID–19 pandemic, but we do not agree that the Area's attainment is due to a temporary economic downturn associated with the COVID–19 pandemic. To the contrary, our analysis of the available data regarding point source emissions in the Cincinnati area and trends in vehicular traffic do not indicate that the Area's attainment was driven by temporary conditions. The effect of the pandemic on point source emissions in the Area was insignificant in comparison to the effect of enforceable control measures, and the decrease in passenger vehicle VMT during the pandemic is not only largely offset by an increase in truck traffic but likely does not have a strong correlation with maximum ozone design values. OKI's mobile source modeling performed for the Area indicates that vehicular emission control measures will continue to drive emissions down even as VMT is projected to increase.

Comment: The commenter asserts that ozone concentrations from the design value period 2017–2019 (*i.e.,* before the COVID–19 pandemic) undermines EPA's finding that the reduced ambient ozone concentrations observed in 2019–2021 are in fact attributable to permanent and enforceable regulations that took effect between 2004 and 2017. The commenter points out that during the 2017–2019 time period, several monitors in the Area recorded annual 4th high daily maximum 8-hour ozone concentrations that exceeded the level of the NAAQS. The commenter contends that EPA's failure to consider this earlier period (*i.e.*, 2017–2019) as a relevant set of data for assessing the relative impact of enforceable emission reductions and the impact of the COVID–19 pandemic on reduced ozone levels in 2020–2021 was arbitrary and capricious and calls into question the reasonableness of EPA's proposed redesignation to attainment. The commenter also notes that EPA looked at precursor emissions from 2014 and 2019 but only analyzed ozone concentrations during the 2019–2021 period.

Response: EPA disagrees with the commenter's suggestion that the fact that the Cincinnati area was not attaining the 2015 ozone NAAQS in 2017–2019 (*i.e.,* before the COVID–19 pandemic) undermines our conclusion that the Area has attained due to permanent and enforceable measures, as opposed to decreases in emissions associated with the pandemic. As discussed in the previous comment responses, many of the permanent and enforceable measures applicable to the sources in the Area or to sources upwind of the Area impose continued, and in some cases additional, emission reductions with each year of implementation (*e.g.,* phased-in mobile source standards in addition to fleet turnover). Control measures do not obtain all emission reductions in the first year of their implementation, and not all impacts from a control measure are necessarily reflected in ozone concentrations in that year. Ozone formation and measured concentrations are dependent on a host of factors, including emissions and meteorology, and the continued application of many control measures across many source categories over a period of time has a significant impact on decreasing ozone concentration trends.

We therefore do not think that violating data from 2017–2019 necessarily means that attaining data from 2019–2021 was caused by a reduction in emissions due to the pandemic. However, in response to the commenter's suggestion, we analyzed emissions information for point sources in the Area and for mobile sources in the Area during pre-pandemic periods and from the years 2020 and 2021 (*i.e.,* during the pandemic). Our conclusion, discussed in the comment response above, is that while the pandemic likely had some impact on emissions in the Area, that impact does not appear to have been the primary driver of decreased ozone concentrations in the Area.

To further support OEPA's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not on favorable meteorology, the state included a classification and regression tree (CART) analysis to demonstrate that the improvement in air quality was not due to unusually favorable meteorology, which was performed by the Lake Michigan Air Directors Consortium (LADCO). The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions in ozone nonattainment areas in the LADCO region. Regression trees were developed for the Cincinnati area ozone data to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or other non-meteorological influences. The CART analysis showed the resulting trends in ozone concentrations declining over the period examined, 2005 through 2020, supporting the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

The CART analysis shows that ozone concentrations for all five high-ozone day types have decreased over the last 16 years, demonstrating that on days with similar meteorology, ozone concentrations on high-ozone days at Cincinnati monitors have decreased substantially since 2005. Overall, OEPA concluded that average summer temperatures have remained steady and average ozone concentrations have decreased from 2005 through 2021, providing a strong basis to conclude that reductions in precursors are responsible for the reductions in elevated ozone concentrations in the Area, and that these emission reductions were not

solely or primarily driven by a pandemic-related decrease in emissions or unusually favorable meteorology, but rather by the host of permanent and enforceable state and federal measures that have been applied and will continue to apply over time.

Further, we find no fault with Ohio's examination of 2019 emissions within the nonattainment area (*i.e.,* the attainment inventory) for purposes of illustrating the reduction in emissions in the Area over time (from 2014 to 2019). To the extent that commenter is suggesting Ohio also should have provided emission inventories for years 2020 and 2021, we do not agree that information was necessary to evaluate emission trends. The State's selection of one year of emissions during a design value period indicating nonattainment and one year of emissions during a design value period indicating attainment was sufficient to show that emissions had decreased substantially within the Area during that time period. Moreover, even though the state did not supply full emission inventories for years 2020 and 2021 (which they were not required to do), EPA performed additional analysis of the potential COVID–19 effects on the Area in response to the commenter's suggestion. As discussed in the previous comment responses, that analysis showed that point source precursor emissions of NO_X and VOC in the Area did not decrease substantially from the pre-pandemic year of 2019 to 2020. Likewise, the Ohio state-wide analysis by OKI concluded that overall traffic conditions in 2021 were decreased by a range of 3 to 7 percent compared to 2019, from June 2021 through January 2022, while truck traffic increased over the same time period. The overall mobile source modeling indicated that an increase in VMT does not necessarily correspond to an increase in emissions, because of the impact of mobile source standards.

We therefore do not agree that it is unreasonable to redesignate the Ohio portion of the Cincinnati area to attainment of the 2015 ozone NAAQS.

Comment: The commenter argues that this action affects an Environmental Justice (EJ) Community. Specifically, the commenter points out that Black Americans make up more than 40% of Cincinnati's residents, and that according to the U.S. Census, Cincinnati has twice the poverty rate of the United States as a whole. The commenter therefore argues that it is particularly incumbent upon EPA to thoroughly consider the monitoring time period of 2017–2019 and not the pandemic years of 2020 and 2021, to ensure that any redesignation to attainment consider the ''longstanding excessive burden experienced by Black and low-income communities in southwestern Ohio.''

Response: EPA sets the NAAQS at a level to protect the public health, with an adequate margin of safety, including the health of at-risk populations, and protect the public welfare from adverse effects. The criteria set forth in 40 CFR 50.19 and appendix U of part 50 to attain the 2015 ozone NAAQS establishes that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration must be less than or equal to 0.070 ppm, which is true of the Area. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, we believe that our approval of Ohio's redesignation request for the 2015 ozone NAAQS would not exacerbate existing pollution exposure or burdens for populations in the Cincinnati area.

Even so, Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal Government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities. To identify environmental burdens and susceptible populations in communities in the Area, EPA performed a screening-level analysis using EPA's EJ screening and mapping tool (''EJSCREEN'').[9] EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators at the county level for each county within the Area (Butler, Clermont, Hamilton and Warren). Additional indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities. EPA's screening-level analysis indicates that communities in the Area affected by this action score below the national average for the EJSCREEN ''Demographic Index'', which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898. As discussed in the EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[10] Additionally, EPA has provided that if any of the EJ indexes for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate.[11] The results indicate that these areas score below the 80th percentile (in comparison to the nation as a whole) in the twelve EJ Indexes established by EPA, which include a combination of environmental and demographic information, with one exception. In Hamilton county, the EJ Index for Risk Management Plan (RMP) Facility Proximity scored at the 81st percentile. This EJ index considers the count of RMP (potential chemical accident management plan) facilities within 5 km (or nearest one beyond 5 km), each divided by distance in kilometers.

Considering these results, EPA further considered forthcoming and existing emission reduction measures that may help to mitigate existing pollution issues in the Area. The Area's redesignation to attainment will include the continued application of the Prevention of Significant Deterioration (PSD) permitting requirements including installation of the Best Available Control Technology (BACT), air quality analysis, additional impacts analysis, and public involvement for new and modified sources. The Federal mobile source and point source emission reduction programs and NO_X cap and trade programs through CSAPR, identified as the permanent and enforceable regulations which led to the Area's attainment, remain in place and will continue to achieve reductions. Further, Ohio has submitted a maintenance plan that shows continuing reductions in NO_X and VOC

[9] *See* documentation on EPA's Environmental Justice Screening and Mapping Tool at *https://www.epa.gov/ejscreen,* last accessed 5/2/2022.

[10] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[11] EPA, ''EJSCREEN Technical Documentation,'' appendix H (September 2019).

emissions through 2035 and includes contingency measure provisions to address any possible future violation of the NAAQS.

Additionally, Ohio has adopted regulations to address the NO_X and VOC Reasonably Available Control Technology (RACT) requirements that apply to moderate areas. Despite Cincinnati's current marginal ozone classification, Ohio voluntarily adopted these RACT rules for the Area after planning efforts were underway for moderate RACT requirements for the 2015 ozone standard in Cleveland. The NO_X RACT Rule 3745–110 of the Ohio Administrative Code (OAC), which became effective March 25, 2022, applies to existing boilers, stationary combustion turbines, stationary internal combustion engines, reheat furnaces, or sources located at a facility that emits or has the potential to emit a total of more than 100 tpy of NO_X emissions and specifically states applicability to sources located in Butler, Clermont, Hamilton or Warren county.[12] Similarly, VOC RACT Rule 3745–21 of the OAC, effective March 27, 2022, is applicable to various source categories in Butler, Clermont, Hamilton and Warren counties to facilities that have a total uncontrolled potential to emit for VOC emissions of 100 tpy. OEPA has submitted the VOC RACT rules that cover both Cleveland and Cincinnati for approval into the Ohio SIP and have submitted the NO_X RACT rules that apply to Cleveland for approval into the Ohio SIP. Hence, they will be implementing NO_X RACT in both Cleveland and Cincinnati, and NO_X RACT will be federally enforceable in Cleveland. These rules will be SIP strengthening and go beyond what is required in the Area at the Federal level and are expected to achieve additional emission reductions and contribute to maintenance of the ozone standard in the Area.

EPA acknowledges that ozone problems may not be solved through redesignations, that regional solutions are required, and that coordinated cooperation between stakeholders may lead to improved air quality. As previously noted, OEPA has established a maintenance plan containing contingency measures as a safeguard designed to ensure compliance with the NAAQS going forward. EPA also continues to implement programs addressing regional and interstate transport of NO_X, such as the Revised CSAPR Update. Finally, EPA encourages the commenter to remain engaged with stakeholders in the effort to protect human health and the environment.

III. Final Action

In accordance with Ohio's December 21, 2021, request, EPA is redesignating the Cincinnati Ohio-Kentucky nonattainment area from nonattainment to attainment of the 2015 ozone NAAQS. EPA finds that the Area is attaining the 2015 ozone NAAQS and meets the statutory requirements for redesignation under the CAA. EPA is also approving Ohio's maintenance plan, which is designed to ensure that the Area will continue to maintain the ozone NAAQS through 2035. Lastly, EPA is approving the state's 2026 and 2035 NO_X and VOC motor vehicle emission budgets for the Ohio portion of the Area.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1).[13]

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive PSD permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

[12] *See https://epa.ohio.gov/divisions-and-offices/air-pollution-control/regulations/effective-rules/dapc-effective-rules,* last accessed 5/20/2022.

[13] *See https://www.govinfo.gov/content/pkg/USCODE-2020-title5/pdf/USCODE-2020-title5-partI-chap5-subchapII-sec553.pdf,* last accessed 3/16/2022.

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 2, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 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. In § 52.1870, the table in paragraph (e) is amended under ''Summary of Criteria Pollutant Maintenance Plan'' by adding an entry for ''Ozone (8-Hour, 2015)'' before the entry for ''PM–10'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Maintenance Plan				
*	*	*	*	*
Ozone (8-Hour, 2015).	Cincinnati (Butler, Clermont, Hamilton, and Warren Counties).	12/21/2021	6/9/2022, [INSERT **FEDERAL REGISTER** CITATION].	EPA is approving the following elements: a determination that the Cincinnati area has attained the 2015 8-Hour ozone standard, a maintenance plan for the 2015 a8-Hour ozone NAAQS, 2026 and 2035 VOC and NO_X motor vehicle emission budgets for the Cincinnati area.
*	*	*	*	*

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended in the table entitled ''Ohio-2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Cincinnati, OH–KY'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
*	*	*	*	*
Cincinnati, OH-KY Butler County. Clermont County. Hamilton County.	June 9, 2022	Attainment		Marginal.

OHIO—2015 8-HOUR OZONE NAAQS—Continued

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Warren County.				
* * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2022–12318 Filed 6–8–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220602–0129]

RIN 0648–BL20

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2022

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces management measures for the 2022 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year. The intent of this action is to set management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest limits and thereby prevent overfishing of the summer flounder, scup, and black sea bass stocks.

DATES: This rule is effective June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission's Management Boards meet jointly each year to recommend recreational management measures. Recreational management measures are required to be set so that recreational harvest achieves, but does not exceed, the recreational harvest limit (RHL).

In this final rule, NMFS is implementing conservation equivalency to manage the 2022 summer flounder and black sea bass recreational fisheries, as proposed on April 18, 2022 (87 FR 22863). The approval of conservation equivalency means that we are waiving Federal summer flounder and black sea bass recreational measures in Federal waters, and for all federally permitted party/charter vessels, regardless of where they fish. States, through the Commission, are collectively implementing measures designed to constrain landings to the 2022 recreational harvest limits. Vessels fishing in Federal waters and Federal party/charter vessels are subject to the regulations in the state in which they land. These measures are consistent with the recommendations of the Council and the Commission. Additional information on the development of these measures is provided in the proposed rule and not repeated here.

For scup, we are implementing a 1-inch (2.54-cm) increase to the minimum size, consistent with the recommendation of the Council and Board. We are not implementing a closure of the recreational scup fishery in Federal waters as originally proposed. The rationale for this change is provided below.

Scup Recreational Management Measures

We have decided not to close the Federal recreational scup fishery as proposed on April 18, 2022; 87 FR 22863. Instead, we are implementing a 1-inch (2.54-cm) increase to the scup recreational minimum size in Federal waters. In Federal waters, this results in a 10-inch (25.4-cm) total length minimum size. Combined with the 1-inch (2.54-cm) size change being implemented by the states, an approximate 33-percent reduction in harvest is expected.

Our rationale for implementing the size limit increase and not the Federal closure, is based, in part, on the objectives of the Magnuson-Stevens Act. Per the National Standards, management actions need to prevent overfishing while minimizing social and economic impacts, considering equity, and minimizing discards, among other factors. Additionally, we considered ongoing actions by the Council and Commission to address the factors that are considered for recreational regulations. Many of the comments received on the proposed rule highlighted these issues, and these are summarized in the comment response section.

The proposed closure would have only impacted the Federal recreational fishery (recreational scup fishing beyond 3 miles from land, or federally permitted party/charter scup vessels regardless of area fished). The majority (about 94 percent) of scup harvest comes from state waters. If a closure had been implemented, it was expected that federally permitted for-hire vessels would have dropped their federal permit for the fishing year and pursued scup in state waters. While this may have alleviated some of the anticipated economic impacts, it would have also likely resulted in increased effort in state waters, minimizing the impact of the closure on overall scup harvest. Additionally, scup is difficult to avoid when fishing for other popular recreational targets such as black sea bass, and because it would have been illegal to retain scup in Federal waters, we anticipated that scup discards on those trips would have increased substantially, further limiting the reduction in scup harvest.

Additionally, the commercial fishery is not expected to harvest its entire quota, and, as in previous years, overall

harvest is not expected to result in overfishing. With less than a month left in the Winter I commercial scup fishery, only 45 percent of the quota has been harvested, trending lower than landings in 2021. A letter from several State Directors cited the repeated quota underutilization of the commercial fishery: ''The commercial fishery has repeatedly underutilized its allocation, leaving an average of 34 percent of the coastwide quota over the last 6 years.'' Preliminary commercial landings from 2021 are 12.93 million lb (5,864 mt) and the 2021 quota was 20.50 million lb (9,298 mt). The 2022 commercial scup quota is 20.38 million lb (9,244 mt) and, as stated above, harvest to date is trending lower than last year. Even if commercial landings in 2022 eventually were to match the 2021 landings, the result would be a 7.4-million lb (3,356-mt) commercial quota underage, which would nearly cover the projected recreational overage of 7.8 million lb (3,538 mt) under status quo recreational regulations. The projected recreational overage of 7.8 million lb (3,538 mt) also does not account for the estimated 33-percent reduction in harvest that is expected to be achieved through the minimum size increase.

Recreational Regulations

Given the potential negative social and economic impacts of the closure and the likelihood that it is not necessary to prevent overfishing, we have determined that the 1-inch (2.54-cm) minimum size increase is sufficient action at this time. However, the Council and Board are considering final action on the Harvest Control Rule Framework Adjustment/Addendum at their joint meeting in June that, if approved, would change the way recreational management measures are set for summer flounder, scup, black sea bass, and bluefish. All of the alternatives being considered by the Council and Board place a greater emphasis on factors such as stock size and trends, fishing mortality, and recruitment, and rely less on Marine Recreational Information Program (MRIP) estimates to determine if, and how, recreational management measures should be changed. We agree that the current process for setting recreational management measures can be improved and we will continue to work with the Council and Board on the Harvest Control Rule Framework/Addendum. However, should the Council and Board fail to take action in June to change the factors to be considered in setting recreational management measures, we intend to pursue Secretarial action to address the recreational regulatory issues.

The regulations at 50 CFR 648.122(b) require the Regional Administrator to propose recreational management measures that will achieve the recreational annual catch limit (ACL): ''If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement annual measures.''

If the Council and Board do not change the way that recreational measures are set, NMFS, through the authority of the Magnuson-Stevens Act at section 305(d), would pursue changes to the regulations that would authorize the Regional Administrator to assess the likelihood of the combined projected recreational and commercial harvest to exceed the acceptable biological catch (ABC) and, if the combined harvest is not likely to exceed the ABC, to implement a transfer of commercial quota to the recreational sector. This transfer would ensure that the recreational sector ACL (adjusted for the transfer) would not be exceeded.

Summer Flounder Recreational Management Measures

The Commission has certified that the 2022 recreational fishing measures required to be implemented in state waters for summer flounder are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in 50 CFR 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2022.

In addition, this action revises the default summer flounder coastwide measures (a 18.5-inch (47-cm) minimum size, four-fish possession limit, and May 15 through September 15 open fishing season), that become effective January 1, 2023, upon the expiration of the 2022 conservation equivalency program.

Black Sea Bass Recreational Management Measures

The Commission has certified that the 2022 recreational fishing measures required to be implemented in state waters for black sea bass are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in 50 CFR 648.145(a), 648.146, and 648.147(b). According to § 648.142(d)(2), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.151 is amended through this final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2022.

This action also sets the following coastwide black sea bass measures: A 14-inch (35.56-cm) minimum size; a 5-fish possession limit; and an open season of May 15–October 8. These measures become effective January 1, 2023, upon the expiration of the 2022 conservation equivalency program.

Changes From the Proposed Rule

We proposed a closure of the Federal, recreational, scup fishery, but, as explained above, we have decided not to close the fishery. Instead, we are implementing a 1-inch (2.54-cm) increase to the minimum size for scup, as recommended by the Council and Board. Otherwise, this final rule is unchanged from the proposed rule.

Comments and Responses

We received 319 comments on the proposed rule, 296 of which were opposed to the Federal recreational scup closure, including comments from the: New York Fishing Tackle Trade Association; Regal Marine Products, Inc.; Rhode Island Party and Charter Boat Association; Stellwagen Bank Charter Boat Association; Connecticut Charter and Party Boat Association; Connecticut Fishermen's Alliance; Freeport Hudson Anglers; and a joint letter from the Center for Sportfishing Policy, National Marine Manufacturers Association, Recreational Fishing Alliance, Coastal Conservation Association, American Sportfishing Association, and the Congressional Sportsmen's Foundation. In part due to our consideration of these comments, we have decided not to close the Federal recreational scup fishery and instead implement a 1-inch (2.54-cm) minimum size increase.

One comment was not relevant to the proposed rule and another simply

stated, ''No.'' These comments are not discussed further.

Comment 1: A significant number of comments cited potential negative social and economic impacts (63 comments and 152 comments, respectively) of a Federal recreational scup closure. These comments claimed a disproportionate and inequitable impact on for-hire (party and charter) vessels, as well as negative impacts on shoreside businesses and individuals who harvest scup for sustenance or recreation. Particularly in the context of the social and economic impacts of the COVID–19 pandemic and the current high costs of food and fuel, the commenters asserted that a closure of the Federal scup fishery at this time would have detrimental impacts to the businesses and individuals that rely on it.

Response: We are not closing the Federal scup fishery, in part because of the negative social and economic impacts anticipated by the commenters. As discussed elsewhere in the preamble, our rationale for implementing the size limit increase instead of the Federal closure is to prevent overfishing while minimizing social and economic impacts, considering equity, and minimizing discards, among other factors. Additionally, we considered ongoing actions by the Council and Commission to address the way that recreational regulations are set.

Comment 2: One hundred and seven comments cited the importance of scup as an accessible and affordable food source and the detrimental effect a Federal closure would have on individuals and families that rely on scup for sustenance.

Response: We are not closing the Federal scup fishery, in part because of the negative impacts anticipated by the commenters. See the earlier part of this preamble for a full discussion of the rationale.

Comment 3: Twenty-two comments specifically referenced Environmental Justice issues with the closure, specifically asserting it would have a disproportionate impact on certain ethnic groups or lower income individuals and families.

Response: We are not closing the Federal scup fishery, in part because of the negative impacts anticipated by commenters. See the earlier part of this preamble for a full discussion of the rationale.

Comment 4: Seventy commenters questioned the need for a closure of the Federal recreational scup fishery when the stock is so healthy, with a biomass of nearly two times the target level.

Response: We are not closing the Federal scup fishery, in part because of the high biomass level and low risk of overfishing even if the recreational fishery exceeds the RHL in 2022. See the earlier part of this preamble for a full discussion of the rationale.

Comment 5: We received five comments in support of the scup closure; these comments cited the need to prevent overfishing or were not supportive of fishing in general.

Response: We have determined that it is not necessary to close the Federal recreational scup fishery to prevent overfishing. Additionally, shifted effort into state waters and potential increases in scup discards on Federal waters trips may have limited, or negated, the actual harvest reduction achieved by the closure. The reduction in harvest achieved by the increased size limit is expected to achieve the needed conservation objective to prevent overfishing and ensure catch does not exceed the ABC. It should be also be noted that scup is not overfished, and is not experiencing overfishing.

Comment 6: We received 24 comments that opposed the proposed 2022 black sea bass measures because they are more restrictive than measures currently in place. Many of these comments also cited dissatisfaction with the specific state regulations that are being implemented to meet the conservationally equivalent reduction in recreational harvest of 20.7 percent. These comments also asserted that black sea bass is an abundant stock, with a biomass over two times the biomass target, and questioned why reductions are needed when the stock is healthy and overfishing is not occurring.

Response: The current regulations for black sea bass require NMFS to implement recreational management measures that are projected to ensure that the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The regulations do not provide flexibility to consider factors such as biomass or fishing mortality in the measure-setting process. Black sea bass is at high levels of biomass, but projected recreational catch and harvest significantly exceeds the previously adopted ACL and RHL. Even though biomass is high, and overfishing is not occurring, because no regulatory flexibility currently exists to incorporate these factors, we are required to implement reductions. NMFS will continue to work with the Council and Commission on the Recreational Reform Initiative to address fundamental problems with recreational fisheries management such as this lack of regulatory flexibility, in as timely a fashion as possible.

Additionally, this rule does not implement state-specific measures, but rather waives the Federal recreational measures. States and regions set their own management measures, which are approved through the Commission process.

Comment 7: We received a significant number of comments that suggested alternative approaches to constrain scup harvest: 128 comments suggested increasing the size limit, with a suggested range from 10 to 14 inches (25.4 to 35.6 cm); 54 comments suggested a reduced bag limit ranging from 3 to 30 fish, or specifying a percent reduction from 10 to 20 percent; 65 comments suggested a seasonal closure, most specified closing January through April, while others more generally stated, ''during the winter'' or any season less than a year-round closure; and 4 comments suggested that the closure could be applied to the private sector only.

Response: We appreciate the public comments and suggestions on alternative approaches to reduce scup harvest. As stated above, we have decided not to close the Federal recreational scup fishery. We are implementing a 1-inch (2.54-cm) increase to the Federal minimum size, as suggested by many commenters and recommended by the Council and Board.

Comment 8: Twenty commenters cited the uncertainty in the MRIP data as rationale for eliminating or lowering the black sea bass and scup harvest reductions.

Response: NMFS agrees that there is uncertainty in the MRIP estimates. Due to concerns about uncertain data points, the Commission's Summer Flounder, Scup, and Black Sea Bass Technical Committee performed additional analyses to examine and ultimately remove and replace data outliers. The Technical Committee (TC) developed a modified Thompson Tau analysis for identifying and smoothing outlier harvest estimates. Based on the results of this analysis, the TC concluded that a revised coastwide harvest reduction target between 20.7 and 26.8 percent would be viable for management. The Council and Board ultimately adopted the 20.7-percent reduction at a joint meeting in February, 2022. This reduction is less than the 28-percent reduction that was originally proposed by the Council and Board. Given that the Technical Committee's analysis and reduction ultimately adopted by the Board and Council removes data outliers, additional changes to the

needed reduction based on outliers may be redundant and inappropriate for management.

For scup, we are not implementing a Federal closure. The minimum size increase being adopted is projected to reduce harvest by 33 percent, less than the 56-percent harvest reduction specified in the Council's analysis.

Comment 9: Five commenters stated that the scup closure would lead to increased discards and, thus, no meaningful reduction in mortality.

Response: NMFS agrees that there may be some catch that would have been converted to discards if we had closed the Federal scup fishery. An expected increase in discards, which would offset the harvest reduction of the closure, was one of the reasons we decided not to close the Federal scup fishery.

It should also be noted that, given all of the factors (weather, regulations for other species, fuel cost, etc.) that can impact recreational fishing behavior, we cannot reliably predict how much catch will change in response to the management changes. Compared to landed fish, fish that are caught and released have a higher rate of survival. The released fish that survive continue to contribute to the population. For black sea bass and scup, it is estimated that 85 percent of released fish that are caught recreationally survive.

Comment 10: Twenty-six comments suggested that commercial fishing operations were to blame for the needed reductions and/or that additional restrictions on commercial fishing operations should be imposed instead of the recreational scup closure. Several comments also stated that recreational fishing had a minor impact, in terms of overall harvest, compared to the commercial fishery.

Response: Recreational scup harvest is a significant proportion of overall scup harvest and mortality. In 2020, 13.50 million lb (6,123 mt) of scup were landed by the commercial fishery, and 12.91 million lb (5,855 mt) were landed by the recreational fishery. In 2019, recreational landings exceeded commercial landings. The commercial fishery has, as mentioned previously in this rule, repeatedly underutilizied its allocation. This action does not consider changes to commercial fishery regulations. Commercial fishery regulations were previously approved through the 2022–2023 specification (86 FR 72859, Dec. 23, 2021). This action is intended to address the 2022 recreational management measures.

Comment 11: Four people commented on specific state regulations for summer flounder, including the suggestion of implementing a slot limit.

Response: This action does not implement state-specific measures for summer flounder. States and/or regions develop their recreational summer flounder management measures through the Commission process. This action only considers the need to implement coastwide measures or the ability to waive Federal measures through the conservation equivalency process. In this action, we have approved conservation equivalency and thus are waiving Federal summer flounder recreational management measures.

Comment 12: Three comments supported the summer flounder regulations, including the RI Charter Boat Association.

Response: We agree, and have implemented conservation equivalency for summer flounder as proposed.

Comment 13: One comment did not support the liberalization of the recreational summer flounder regulations, citing concerns about the stock health.

Response: The Council, Board, and technical bodies considered the stock status of summer flounder when developing the recommended summer flounder liberalization. In accordance with the regulations, a liberalization of up to 33 percent could have been applied but, given that the stock is still below the target and general concerns regarding stock health, a lower liberalization of 16.5 percent was selected. It should also be noted that states and/or regions do not have to liberalize measures by 16.5 percent. A 16.5-percent increase in recreational harvest is a ceiling, or maximum liberalization, allowed under conservation equivalency.

Comment 14: One comment discussed the timing of the proposed rule and that it is difficult to run a business when regulations are unknown even after the recreational fishing season has started.

Response: We acknowledge the concerns about the timing of this, and previous, recreational rulemaking and the difficulty the timing creates for businesses and individuals to plan for the season. Unfortunately, getting recreational management measures in place was not possible any earlier this year because of the timing of the Council and Board meetings, the time required for states and regions to develop management measures, and the time required for the regulatory process. We are working with the Council and Board on the Harvest Control Rule Framework/Addendum that considers options to set measures every other year and that may allow for measures to be set earlier, so they are available before the start of the fishing year (January 1).

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that these management measures are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible.

The Federal coastwide regulatory measures for recreational summer flounder and black sea bass fishing that were effective last year remain in place until the decision to waive Federal measures for 2022 is made effective by this final rule. Many states have already implemented their conservationally equivalent 2022 measures; a delay in implementing the measures of this rule will be contrary to the public interest because it would increase confusion on what measures are in place in Federal waters. Inconsistencies between the states' measures and the Federal measures could lead to misunderstanding of the applicable regulations and could increase the likelihood of noncompliant landings. Additionally, the Federal measures currently in place are more restrictive than many of the measures in state waters, which unnecessarily disadvantages federally permitted vessels who are subject to these more restrictive measures until this final rule is effective.

The measures currently in place for scup and black sea bass are more liberal than the measures this action will implement. Further delay of the implementation of the 2022 measures will increase the likelihood that the 2022 RHLs and recreational ACLs will be exceeded. We are required to implement measures to constrain recreational harvest to prevent overfishing.

In response to this action, unlike actions that require an adjustment period to comply with new rules, recreational and charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply

means adhering to the published state management measures for size, bag limit, and season of summer flounder, scup, and black sea bass while the recreational and charter/party operators are engaged in fishing activities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. While we received no comments specifically regarding this certification, we did receive a number of comments citing economic impacts from the proposed closure of the scup fishery in Federal waters. However, in this final rule, we are not taking an action to close the scup fishery, which mitigates those potential economic impacts. Therefore, as a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 6, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.104, revise paragraph (b) to read as follows:

§ 648.104 Summer flounder size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder is 18.5-inches (47 cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under § 648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

■ 3. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 4. In § 648.126, revise paragraph (b) to read as follows:

§ 648.126 Scup minimum fish sizes.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10 inches (25.4 cm) total length for all vessels that do not have a scup moratorium permit, or for party and charter vessels that are issued a scup moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat. However, possession of smaller scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

■ 5. In § 648.145, revise paragraph (a) to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 5 black sea bass in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the conservation equivalent measures described in § 648.151. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 5 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.150 and abide by state regulations.

* * * * *

■ 6. Revise § 648.146 as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through October 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 7. In § 648.147, revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 14 inches (35.56 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless

otherwise specified in the conservation equivalent measures as described in § 648.151. However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

* * * * *

■ 8. Add § 648.151 to subpart I to read as follows:

§ 648.151 Black sea bass conservation equivalency.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a). This determination is based on a recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting black sea bass in or from the EEZ and subject to the recreational fishing measures of this part, landing black sea bass in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a), respectively, due to the lack of, or the reversal of, a conservation-equivalent recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—June 24 through December 31; minimum size—16 inches (40.64 cm); and possession limit—3 fish.

[FR Doc. 2022–12450 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 111
Thursday, June 9, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0601; Project Identifier MCAI–2021–01286–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–10–24, which applies to certain Airbus SAS Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes; AD 2018–23–14, which applies to certain Airbus SAS Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes; and AD 2021–05–12, which applies to certain Airbus SAS Model A330–200 Freighter series airplanes. AD 2017–10–24, AD 2018–23–14, and AD 2021–05–12 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2017–10–24, AD 2018–23–14, and AD 2021–05–12, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would revise the applicability by adding airplanes. This proposed AD would also continue to require the actions in AD 2018–23–14 and AD 2021–05–12, and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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.

DATES: The FAA must receive comments on this proposed AD by July 25, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 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.* For Airbus service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *https://www.airbus.com.* 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–2022–0601.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0601; 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, 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email *vladimir.ulyanov@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–2022–0601; Project Identifier MCAI–2021–01286–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 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 Vladimir Ulyanov,

Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email *vladimir.ulyanov@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 2018–23–14, Amendment 39–19501 (83 FR 60754, November 27, 2018) (AD 2018–23–14), which applies to certain Airbus SAS Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes. AD 2018–23–14 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive instructions and/or airworthiness limitation requirements. The FAA issued AD 2018–23–14 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. AD 2018–23–14 specifies that accomplishing the actions required by paragraph (g) of that AD terminates all of the requirements of AD 2017–10–24, Amendment 39–18898 (82 FR 24035, May 25, 2017).

The FAA also issued AD 2021–05–12, Amendment 39–21455 (86 FR 15092, March 22, 2021) (AD 2021–05–12), which applies to certain Airbus SAS Model A330–200 Freighter series airplanes. AD 2021–05–12 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–05–12 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. AD 2021–05–12 specifies that accomplishing the revision required by that AD terminates the limitation for the nose landing gear lower torque link having part number D64001 as required by paragraph (g) of AD 2018–23–14, Amendment 39–19501 (83 FR 60754, November 27, 2018), for Model A330–223F and –243F airplanes only.

Actions Since AD 2018–23–14 and AD 2021–05–12 Was Issued

Since the FAA issued AD 2018–23–14 and AD 2021–05–12, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0246, dated November 17, 2021 (EASA AD 2021–0246) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, –203, –223, –243 airplanes; Model A330–223F and –243F airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A330–841 airplanes; and Model A330–941 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after July 1, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0246 specifies procedures for new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require the following service information.

- Airbus A330 Airworthiness Limitations Section (ALS) Part 1, Safe Life Airworthiness Limitation Items (SL–ALI), Revision 09, dated September 18, 2017, which the Director of the Federal Register approved for incorporation by reference as of January 2, 2019 (83 FR 60754, November 27, 2018).
- Airbus A330 ALS Part 1, SL–ALI, Variation 9.2, dated November 28, 2017, which the Director of the Federal Register approved for incorporation by reference as of January 2, 2019 (83 FR 60754, November 27, 2018).
- Airbus A330 ALS Part 1, SL–ALI, Variation 9.3, dated November 29, 2017, which the Director of the Federal Register approved for incorporation by reference as of January 2, 2019 (83 FR 60754, November 27, 2018).
- EASA AD 2020–0190, dated August 27, 2020, which the Director of the Federal Register approved for incorporation by reference as of April 26, 2021 (86 FR 15092, March 22, 2021).

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.

FAA's Determination

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 the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2018–23–14 and AD 2021–05–12. This proposed AD would also revise the applicability by adding airplanes and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0246 described previously, as proposed for incorporation by reference. Revising the existing maintenance or inspection program, as specified in EASA AD 2021–0246, would terminate the retained requirements in this AD. Any differences with EASA AD 2021–0246 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (p)(1) of this proposed AD.

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 2021–0246 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0246 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 2021–0246 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 2021–0246. Service information required by EASA AD 2021–0246 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0601 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 138 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–23–14 and AD 2021–05–12 to be $7,650 (90 work-hours × $85 per work-hour) per AD.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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) 2017–10–24, Amendment 39–18898 (82 FR 24035, May 25, 2017); AD 2018–23–14, Amendment 39–19501 (83 FR 60754, November 27, 2018); and AD 2021–05–12, Amendment 39–21455 (86 FR 15092, March 22, 2021); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–0601; Project Identifier MCAI–2021–01286–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 25, 2022.

(b) Affected ADs

This AD replaces the ADs specified in paragraphs (b)(1) through (3) of this AD.

(1) AD 2017–10–24, Amendment 39–18898 (82 FR 24035, May 25, 2017) (AD 2017–10–24).

(2) AD 2018–23–14, Amendment 39–19501 (83 FR 60754, November 27, 2018) (AD 2018–23–14).

(3) AD 2021–05–12, Amendment 39–21455 (86 FR 15092, March 22, 2021) (AD 2021–05–12).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 1, 2021.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program for AD 2018–23–14, With a New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2018–23–14, with a new terminating action. For Airbus SAS Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 29, 2017: Within 90 days after January 2, 2019 (the effective date of AD 2018–23–14), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the service information identified in paragraphs (g)(1) through (3) of this AD. The initial compliance times for accomplishing the tasks are at the applicable times specified in the service information identified in paragraphs (g)(1) through (3) of this AD, or within 90 days after January 2, 2019, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (l) of this AD terminates the requirements of this paragraph.

(1) Airbus A330 Airworthiness Limitations Section (ALS) Part 1, Safe Life Airworthiness Limitation Items (SL–ALI), Revision 09, dated September 18, 2017.

(2) Airbus A330 ALS Part 1, SL–ALI, Variation 9.2, dated November 28, 2017.

(3) Airbus A330 ALS Part 1, SL–ALI, Variation 9.3, dated November 29, 2017.

(h) Retained Restrictions on Alternative Actions and Intervals for AD 2018–23–14, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2018–23–14, with a new exception. Except as required by paragraphs (i) and (l) of this AD, after the existing maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p)(1) of this AD.

(i) Retained Revision of the Existing Maintenance or Inspection Program for AD 2021–05–12, With a New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2021–05–12, with a new terminating action. For Airbus SAS Model A330–223F and –243F airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 29, 2020, except as specified in paragraph (j) of this AD, Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0190, dated August 27, 2020 (EASA AD 2020–0190). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (l) of this AD terminates the requirements of this paragraph.

(j) For AD 2021–05–12: Retained Exceptions to EASA AD 2020–0190

This paragraph restates the exceptions specified in paragraph (h) of AD 2021–05–12, with no changes.

(1) The requirements specified in paragraph (1) of EASA AD 2020–0190 do not apply to this AD.

(2) Paragraph (2) of EASA AD 2020–0190 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations'' specified in paragraph (2) of EASA AD 2020–0190 within 90 days after April 26, 2021 (the effective date of AD 2021–05–12).

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA AD 2020–0190 is on or before the applicable ''limitations'' specified in paragraph (2) of EASA AD 2020–0190, or within 90 days after April 26, 2021 (the effective date of AD 2021–05–12), whichever occurs later.

(4) The provision specified in paragraph (3) of EASA AD 2020–0190 does not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0190 does not apply to this AD.

(k) Retained Restrictions on Alternative Actions and Intervals for AD 2021–05–12, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2021–05–12, with a new exception. Except as required by paragraph (l) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0190.

(l) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (m) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0246, dated November 17, 2021 (EASA AD 2021–0246). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) and (i) of this AD.

(m) Exceptions to EASA AD 2021–0246

(1) Where EASA AD 2021–0246 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraph (1) of EASA AD 2021–0246 do not apply to this AD.

(3) Paragraph (2) of EASA AD 2021–0246 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2021–0246 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (2) of EASA AD 2021–0246, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (3) and (4) of EASA AD 2021–0246 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0246 does not apply to this AD.

(n) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (l) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0246.

(o) Terminating Action for Certain Requirements of Paragraph (g) of This AD

Accomplishing the actions required by paragraph (i) of this AD terminates the limitation for the nose landing gear lower torque link having part number D64001, as required by paragraph (g) of AD 2018–23–14, for Model A330–223F and –243F airplanes only.

(p) 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 (q)(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.

(q) Related Information

(1) For EASA ADs 2020–0190 and 2021–0246, 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–2022–0601.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *https://www.airbus.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 31, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–12258 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0604; Project Identifier MCAI–2021–01375–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–19–20, which applies to all Dassault Aviation Model FALCON 7X airplanes. AD 2021–19–20 requires amending the existing airplane flight manual (AFM) to incorporate a check and an operating limitation regarding the O_2 saver function. Since the FAA issued AD 2021–19–20, it has been determined that the AFM update may not be sufficient to mitigate the risk of failed deactivation of the O_2 saver function. This proposed AD would retain the requirements of AD 2021–19–20 and would require physical deactivation of the O_2 saver function, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. This proposed AD would also limit the installation of affected parts under certain conditions. 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 25, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 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 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–2022–0604.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0604; 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, 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: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@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–2022–0604; Project Identifier MCAI–2021–01375–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 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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation

Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@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 2021–19–20, Amendment 39–21738 (86 FR 51604, September 16, 2021) (AD 2021–19–20), which applies to all Dassault Aviation Model FALCON 7X airplanes. AD 2021–19–20 requires amending the existing AFM to incorporate a check and an operating limitation regarding the O_2 saver function. The FAA issued AD 2021–19–20 to address defects on the piston hole associated with the O_2 saver feature that may prevent efficient deactivation of the O_2 saver function, which could lead to inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck.

Actions Since AD 2021–19–20 Was Issued

Since the FAA issued AD 2021–19–20, Safran (the mask manufacturer) and Dassault identified the batch of flightcrew oxygen masks affected by the manufacturing defects. Additional safety analysis determined that the AFM amendment required by AD 2021–19–20 may not be sufficient to mitigate the risk of failed deactivation of the O_2 saver function in the long term. Consequently, Dassault issued service information providing instructions for mechanically deactivating the O_2 saver function of affected flightcrew oxygen masks.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0272, dated December 6, 2021 (EASA AD 2021–0272) (also referred to as the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes.

This proposed AD was prompted by reports of defects that may prevent efficient deactivation of the O_2 saver function of crew oxygen masks and a determination that the AFM amendment required by AD 2021–19–20 may not be sufficient to mitigate the risk. The FAA is proposing this AD to address defects on the piston hole associated with the O_2 saver feature that may prevent efficient deactivation of the O_2 saver function, which could result in an inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–19–20, this proposed AD would retain all of the requirements of AD 2021–19–20. Those requirements are referenced in EASA AD 2021–0272, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0272 specifies procedures for amending the existing AFM to incorporate a specific check to ensure that the O_2 saver function is not activated and an operating limitation to prevent use of the O_2 saver function; and for mechanically deactivating the O_2 saver function of the affected parts (Safran flightcrew oxygen masks having part number MLD40–45–005 and serial number B150451 through B172005 inclusive without the letter ''R'' after the serial number). EASA AD 2021–0272 also limits the installation of affected parts under certain conditions.

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.

FAA's Determination

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 the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0272 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.

EASA AD 2021–0272 requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

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 2021–0272 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0272 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 2021–0272 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 2021–0272. Service information required by EASA AD 2021–0272 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0604 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–19–20.	1 work-hour × $85 per hour = $85	$0	$85	Up to $1,700.
New proposed actions	4 work-hours × $85 per hour = $340	0	340	$6,800.

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.

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) 2021–19–20, Amendment 39–21738 (86 FR 51604, September 16, 2021); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2022–0604; Project Identifier MCAI–2021–01375–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 25, 2022.

(b) Affected ADs

This AD replaces AD 2021–19–20, Amendment 39–21738 (86 FR 51604, September 16, 2021) (AD 2021–19–20).

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category.

Note 1 to paragraph (c): Model FALCON 7X airplanes with Dassault modification M1000 incorporated are commonly referred to as ''Model FALCON 8X'' as a marketing designation.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports of defects on the piston hole associated with the O_2 saver function that may prevent efficient deactivation of the O_2 saver function and a determination that the airplane flight manual (AFM) amendment required by AD 2021–19–20 may not be sufficient to mitigate the risk of failed deactivation of the O_2 saver function. The FAA is issuing this AD to address defects that may prevent efficient deactivation of the O_2 saver function, which could result in an inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck.

(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 2021–0272, dated December 6, 2021 (EASA AD 2021–0272).

(h) Exceptions to EASA AD 2021–0272

(1) Where EASA AD 2021–0272 refers to September 13, 2021 (the effective date of EASA AD 2021–0202–E), this AD requires using September 16, 2021 (the effective date of AD 2021–19–20).

(2) Where EASA AD 2021–0272 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0272 requires operators to ''inform all flight crews, and thereafter operate the aeroplane accordingly,'' this AD does not require those actions as they are already required by existing FAA operating regulations.

(4) The ''Remarks'' section of EASA AD 2021–0272 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0272 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k)(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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) For EASA AD 2021–0272, 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–2022–0604.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

Issued on June 2, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–12268 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0603; Project Identifier MCAI–2021–01093–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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 Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This proposed AD was prompted by a report that some rudder power control unit (PCU) load limiters were found in service with the crimping missing from the end cap; therefore, the pilot command from the load limiter might not transmit correctly. This proposed AD would require a one-time inspection of the rudder PCU load limiters for correct crimping of the end cap, and replacing any defective rudder PCU load limiter. For certain airplanes, this proposed AD would also require repetitive testing of the rudder PCU load limiter for correct functioning, and applicable corrective actions. 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 25, 2022.

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

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

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0603; 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, 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: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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–2022–0603; Project Identifier MCAI–2021–01093–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 the 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 Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–33, dated October 6, 2021 (also referred to after this as the MCAI), to correct an unsafe condition for certain

Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0603.

This proposed AD was prompted by a report that some rudder PCU load limiters were found in service with the crimping missing from the end cap; therefore, the pilot command from the load limiter might not transmit correctly. The FAA is proposing this AD to address defective rudder PCU load limiters, which could result in incorrect transmission of the pilot command, and loss of control of the rudder. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Bombardier Service Bulletin 604–27–039, Revision 01, dated April 6, 2021.
- Bombardier Service Bulletin 600–0776, dated December 7, 2020.
- Bombardier Service Bulletin 601–0648, dated December 7, 2020.

This service information describes procedures for a one-time inspection of the rudder PCU load limiters for correct crimping of the end cap, and replacing any defective PCU load limiter. These documents are distinct because they apply to different airplane configurations.

Bombardier has also released the following service information.

- Bombardier Service Bulletin 605–27–003, dated December 7, 2020.
- Bombardier Service Bulletin 650–27–010, dated December 7, 2020.

This service information describes procedures for repetitive testing of certain PCU load limiters for proper functioning and applicable corrective actions (performing the one-time inspection of the rudder PCU load limiters for correct crimping of the end cap, and replacing any defective PCU load limiter). This service information also describes procedures for a one-time inspection of the rudder PCU load limiters for correct crimping of the end cap, and replacing any defective PCU load limiter, which terminates the repetitive tests. These documents are distinct because they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 379 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 2 work-hours × $85 per hour = Up to $170	$0	Up to $170	Up to $64,430.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850 (per rudder PCU load limiter)	$50	$900

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:

Bombardier, Inc.: Docket No. FAA–2022–0603; Project Identifier MCAI–2021–01093–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 25, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. airplanes certificated in any category, identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–1A11 (600) airplanes having serial numbers (S/Ns) 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (601) airplanes having S/Ns 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes having S/Ns 5001 through 5194 inclusive, 5301 through 5665 inclusive, 5701 through 5988 inclusive, 6050 through 6158 inclusive, and 6160 through 6162 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report that some rudder power control unit (PCU) load limiters were found in service with the crimping missing from the end cap; therefore, the pilot command from the load limiter might not transmit correctly. The FAA is proposing this AD to address defective rudder PCU load limiters, which could result in incorrect transmission of the pilot command, and loss of control of the rudder.

(f) Compliance

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

(g) Inspection and Replacement for Certain Airplanes

At the applicable time specified in paragraph (g)(1) or (2) of this AD, inspect each rudder PCU load limiter having part number (P/N) 600–91302–43 or P/N 600–91302–53 for correct crimping of the end cap, in accordance with paragraph 2.B., Part A, of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD. If the crimping is missing from any end cap, before further flight, replace the defective rudder PCU load limiter, in accordance with paragraph 2.C., Part B, of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD.

(1) For Model CL–600–1A11 airplanes having S/Ns 1004 through 1085 inclusive; Model CL–600–2A12 airplanes having S/Ns 3001 through 3066 inclusive; and Model CL–600–2B16 airplanes having S/Ns 5001 through 5194 inclusive: Inspect within 800 flight hours after the effective date of this AD.

(2) For Model CL–600–2B16 airplanes having S/Ns 5301 through 5665 inclusive: Inspect within 2,200 flight hours after the effective date of this AD.

Figure 1 to paragraph (g) – *Service Information References*

Airplane Model	Serial Number	Service Information
CL-600-1A11	1004 through 1085 inclusive	Bombardier Service Bulletin 600-0776, dated December 7, 2020
CL-600-2A12	3001 through 3066 inclusive	Bombardier Service Bulletin 601-0648, dated December 7, 2020
CL-600-2B16	5001 through 5194 inclusive	Bombardier Service Bulletin 601-0648, dated December 7, 2020
CL-600-2B16	5301 through 5665 inclusive	Bombardier Service Bulletin 604-27-039, Revision 01, dated April 6, 2021
CL-600-2B16	5701 through 5988 inclusive	Bombardier Service Bulletin 650-27-010, dated December 7, 2020
CL-600-2B16	6050 through 6158 inclusive, and 6160 through 6162 inclusive	Bombardier Service Bulletin 605-27-003, dated December 7, 2020

(h) Repetitive Testing, Inspection, and Replacement for Certain Airplanes

For Model CL–600–2B16 airplanes having S/Ns 5701 through 5988 inclusive, 6050 through 6158 inclusive, and 6160 through 6162 inclusive, do the actions specified in paragraphs (h)(1) and (2) of this AD.

(1) Within 1,000 flight hours after the effective date of this AD, test each rudder PCU load limiter for correct functioning, in accordance with paragraph 2.B., Part A, of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD. Repeat the test thereafter at intervals not to exceed 800 flight hours until the inspection required by paragraph (h)(2) of this AD has been accomplished. If any rudder PCU load limiter fails any test, before further flight, do the inspection specified in paragraph (h)(2) of this AD.

(2) Within 3,400 flight hours after the effective date of this AD, inspect each rudder PCU load limiter having P/N 600–91302–43 or P/N 600–91302–53 for correct crimping of the end cap, in accordance with paragraph 2.C., Part B, of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD. If the crimping is missing from any end cap, before further flight, replace the defective rudder PCU load limiter, in accordance with paragraph 2.D., Part C, of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD. Accomplishment of this inspection terminates the repetitive testing required by paragraph (h)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–33, dated October 6, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0603.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 31, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–12256 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0672; Project Identifier MCAI–2020–01606–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–04–20, which applies to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. AD 2020–04–20 requires repetitive inspections of certain parts for discrepancies that meet specified criteria, and replacement as necessary; repetitive inspections of certain parts for damage and wear, and rework of parts; and electrical bonding checks of certain couplings. AD 2020–04–20 also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. For certain airplanes, AD 2020–04–20 allows a modification that would terminate the repetitive inspections. Since the FAA issued AD 2020–04–20, the FAA has determined that a more robust lightning ignition protection design is necessary and that additional airplanes are affected by the unsafe condition. This proposed AD would continue to require the actions in AD 2020–04–20, revise the applicability by adding airplanes, and require, for certain airplanes, the previously optional rework and retrofit of certain parts of the fuel system. Doing the rework and retrofit would terminate the retained initial and repetitive inspections in this AD. 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 25, 2022.

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

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

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0672; 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: Joseph Catanzaro, Aerospace Engineer,

Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@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–2022–0672; Project Identifier MCAI–2020–01606–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 the 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 proposed 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 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 Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@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.

Discussion

The FAA issued AD 2020–04–20, Amendment 39–19857 (61 FR 17473, March 30, 2020) (AD 2020–04–20), for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. AD 2020–04–20 requires repetitive inspections of certain parts for discrepancies that meet specified criteria, and replacement as necessary; repetitive inspections of certain parts for damage and wear, and rework of parts; and electrical bonding checks of certain couplings. AD 2020–04–20 also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. For certain airplanes, AD 2020–04–20 allows a modification that would terminate the repetitive inspections. AD 2020–04–20 resulted from reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. The FAA issued AD 2020–04–20 to address wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike.

Actions Since AD 2020–04–20 Was Issued

Since the FAA issued AD 2020–04–20, the FAA has determined that a more robust lightning ignition protection design is necessary, which will better mitigate the risk of lightning strike induced fuel tank ignition through the use of high resistance isolators, a new fuel coupling design, and improved structural support. Additional airplanes are also affected by the unsafe condition.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2017–04R3, dated April 1, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series 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–2022–0672.

This proposed AD was prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, and that a more robust lightning ignition protection design is necessary. The FAA is proposing this AD to address wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

This proposed AD would require the following service information, which the Director of the Federal Register approved for incorporation by reference as of May 4, 2020 (61 FR 17473, March 30, 2020).

- Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.
- Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.
- Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.
- Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018.
- Q400 Dash 8 (Bombardier) Temporary Revision ALI–0193, dated April 24, 2018.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would retain all of the requirements of AD 2020–04–20. This proposed AD would also require revising the applicability by adding airplanes, and for certain airplanes, reworking and retrofitting certain parts of the fuel system. Doing the rework and retrofit would terminate the existing initial and repetitive inspections in this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 54 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–04–20.	268 work-hours × $85 per hour = $22,780	$0	$22,780	$1,230,120.
New proposed actions	Up to 1,747 work-hours × $85 per hour = Up to $148,495.	87,385	Up to $235,880 ...	Up to $12,737,520.

* Table does not include estimated costs for revising the existing maintenance or inspection program.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that this 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) 2020–04–20, Amendment 39–19857 (61 FR 17473, March 30, 2020); and

■ b. Adding the following new AD:

De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.): Docket No. FAA–2022–0672; Project Identifier MCAI–2020–01606–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 25, 2022.

(b) Affected ADs

This AD replaces AD 2020–04–20, Amendment 39–19857 (61 FR 17473, March 30, 2020) (AD 2020–04–20).

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes, certificated in any category, manufacturer serial numbers 4001 and 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, and that a more robust lightning ignition protection design is necessary. The FAA is issuing this AD to address such wear, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike.

(f) Compliance

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

(g) Retained Initial Inspection Compliance Times, With New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2020–04–20, with new terminating action. For airplanes having serial numbers 4001 and 4003 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have not done the actions specified in Bombardier Service Bulletin 84–28–21: At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. Accomplishing the terminating action required by paragraph (o) of this AD terminates the initial inspection required by this paragraph.

(1) For all airplanes except those identified in paragraph (g)(2) of this AD: Within 6,000 flight hours or 36 months, whichever occurs first after May 4, 2020 (the effective date of AD 2020–04–20).

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or after May 4, 2020 (the effective date of AD 2020–04–20): Within 6,000 flight hours or 36 months, whichever occurs first after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) Retained Repetitive Inspections and Corrective Actions, With New Terminating Action

This paragraph restates the requirements of paragraph (h) of AD 2020–04–20, with new terminating action. For airplanes having serial numbers 4001 and 4003 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have not done the actions specified in Bombardier Service Bulletin 84–28–21: At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. Repeat the actions thereafter at intervals not to exceed 6,000 flight hours or 36 months, whichever occurs first. Accomplishing the terminating action required by paragraph (o) of this AD terminates the repetitive inspections required by this paragraph.

(1) Do a detailed inspection of the clamshell coupling bonding wires, fuel couplings, and associated sleeves for discrepancies that meet specified criteria, as identified in, and in accordance with, paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018. If any conditions are found meeting the criteria specified in Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, before further flight, replace affected parts with new couplings and sleeves of the same part number, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Bulletin 84–28–20, Revision D, dated November 23, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.

(i) Retained Electrical Bonding Checks/ Detailed Inspection, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2020–04–20, with no changes. For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have done the actions specified in Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017; and airplanes having serial numbers 4576 through 4581 inclusive: Within 6,000 flight hours or 36 months after May 4, 2020, whichever occurs first, do the actions specified in paragraph (i)(1) or (2) of this AD.

(1) Accomplish electrical bonding checks of all threaded couplings on the inboard vent lines in the left and right wings, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts; and a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions; in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.

(j) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2020–04–20, with no changes. Within 30 days after May 4, 2020 (the effective date of AD 2020–04–20), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018; and Q400 Dash 8 (Bombardier) Temporary Revision ALI–0193, dated April 24, 2018. Except as specified in paragraph (k) of this AD, the initial compliance time for doing the tasks in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018, is at the time specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018, or within 30 days after May 4, 2020, whichever occurs later.

(k) Retained Initial Compliance Time for Task 284000–419, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2020–04–20, with no changes. The initial compliance time for task 284000–419 is at the time specified in paragraph (k)(1) or (2) of this AD, as applicable, or within 30 days after May 4, 2020 (the effective date of AD 2020–04–20), whichever occurs later.

(1) For airplanes having serial numbers 4001 and 4003 through 4575 inclusive: Within 18,000 flight hours or 108 months, whichever occurs first, after the earliest date of embodiment of Bombardier Service Bulletin 84–28–21 on the airplane.

(2) For airplanes having serial numbers 4576 and subsequent: Within 18,000 flight hours or 108 months, whichever occurs first, from the date of issuance of the original airworthiness certificate or original export certificate of airworthiness.

(l) Retained No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2020–04–20, with no changes. After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p)(1) of this AD.

(m) Retained No Reporting Provisions, With No Changes

This paragraph restates the provisions of paragraph (n) of AD 2020–04–20, with no changes. Although Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(n) Retained Credit for Previous Actions, With No Changes

(1) This paragraph restates the requirements of paragraph (o) of AD 2020–04–20, with no changes. This paragraph provides credit for the actions required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (n)(1)(i) through (iii) of this AD.

(i) Bombardier Service Bulletin 84–28–20, Revision A, dated December 14, 2016.

(ii) Bombardier Service Bulletin 84–28–20, Revision B, dated February 13, 2017.

(iii) Bombardier Service Bulletin 84–28–20, Revision C, dated April 28, 2017.

(2) For the airplane having serial number 4164, this paragraph provides credit for the initial inspections required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–20, dated September 30, 2016.

(3) This paragraph provides credit for the actions specified in paragraph (o) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (n)(3)(i) through (v) of this AD.

(i) Bombardier Service Bulletin 84–28–21, dated August 31, 2017.

(ii) Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017, in combination with incorporating the information specified in Bombardier Modification Summary Package (ModSum) IS4Q2800032, Revision A, dated February 1, 2018.

(iii) Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017, in combination with incorporating any of the applicable airworthiness limitation change request (ACR) specified in figure 1 to paragraph (n)(6)(ii) of this AD.

(iv) Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(4) This paragraph provides credit for the actions required by paragraph (i)(1) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–26, dated August 14, 2018.

(5) This paragraph provides credit for the actions required by paragraph (i)(2) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(6) For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive, and that are post Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017: This paragraph provides credit for the actions required by paragraph (i) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (n)(6)(i) or (ii) of this AD.

(i) Bombardier Modification Summary Package (ModSum) IS4Q2800032, dated February 1, 2018.

(ii) Any ACR specified in figure 1 to paragraph (n)(6)(ii) of this AD.

Figure 1 to paragraph (n)(6)(ii) – *ACRs*

ACR Number	Dated
400-072	January 24, 2018
400-073	January 23, 2018
400-074	January 24, 2018
400-077	February 27, 2018
400-078	March 21, 2018
400-079	April 18, 2018
400-080	April 30, 2018
400-081	May 4, 2018
400-082	May 4, 2018
400-083	June 4, 2018
400-084	May 18, 2018

(o) Rework and Retrofit

For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive, that have accomplished the actions specified in Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017, but have not incorporated the information in Bombardier Modification Summary Package (ModSum) IS4Q2800032, Revision A, dated February 1, 2018, or have not incorporated any of the applicable ACR specified in figure 1 to paragraph (n)(6)(ii) of this AD: At the applicable time specified in paragraph (o)(1) or (2) of this AD, rework (repair, replace, or blend, as applicable) the parts (fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges); and do a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions; in accordance with Part B of paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018. Accomplishing these actions terminates the initial and repetitive inspections required by paragraphs (g) and (h) of this AD.

(1) For airplanes with greater than 20,000 total flight hours as of the effective date of this AD: Do the actions within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first.

(2) For airplanes with less than or equal to 20,000 total flight hours as of the effective date of this AD: Do the actions within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

(p) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2017–04R3, issued April 1, 2020 for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0672.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on June 2, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–12265 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0712; Airspace Docket No. 22–ACE–1]

RIN 2120–AA66

Proposed Amendment and Revocation of Multiple Air Traffic Service (ATS) Routes; Establishment of Area Navigation (RNAV) Route; and Revocation of the Pawnee City, NE, Low Altitude Reporting Point in the Vicinity of Pawnee City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Jet Route J–64; amend VHF Omnidirectional Range (VOR) Federal airways V–50, V–71, V–216, and V–307; amend Area Navigation (RNAV) route T–286; establish RNAV route T–468; and revoke J–130, J–192, V–553, and the Pawnee City, NE, low altitude reporting point. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Pawnee City, NE, VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Pawnee City VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before July 25, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0712; Airspace Docket No. 22–ACE–1 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, 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 modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

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–2022–0712 Airspace; Docket No. 22–ACE–1) 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–2022–0712; Airspace Docket No. 22–ACE–1.'' 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 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 **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 Operations Support Group, Central Service Center, Federal Aviation Administration, 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.

Background

The FAA is planning to decommission the Pawnee City, NE, VOR in February 2023. The Pawnee City VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Pawnee City, NE, VORTAC is planned for decommissioning, the co-located Distance Measuring Equipment (DME) portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The air traffic service (ATS) routes effected by the Pawnee City VOR

decommissioning are Jet Routes J–64, J–130, and J–192; VOR Federal airways V–50, V–71, V–216, V–307, and V–553; and RNAV route T–286. With the planned decommissioning of the Pawnee City VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to J–64, V–71, and V–216 would result in a gap being created in the ATS routes; to V–50 and V–307 would result in the airways being shortened; and to T–286 would result in one route point being changed and one route point being removed from the description, without affecting the route structure. Additionally, proposed actions to J–130, J–192, V–553, and the Pawnee City, NE, low altitude reporting point would result in the ATS routes and low altitude reporting point being revoked.

To overcome the proposed modifications and revocations to the affected ATS routes, instrument flight rules (IFR) traffic could use portions of adjacent ATS routes, including Jet Routes J–21, J–25, J–41, J–60, J–80, and J–146 in the high altitude enroute structure and V–77, V–159, and V–532 in the low altitude enroute structure, or receive air traffic control (ATC) radar vectors to fly around or through the affected area. Pilots equipped with RNAV capabilities could also navigate using Q–90 and Q–136 in the high altitude enroute structure; T–286, T–411, or T–468 being established in the low altitude enroute structure; or point to point using the existing NAVAIDs and fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

Additionally, the FAA proposes to amend the T–286 RNAV route by replacing the Pawnee City, NE, VORTAC with a waypoint (WP) being established in close proximity of the Pawnee City VORTAC, as well as removing an unnecessary fix from the route description, and extending the existing T–286 RNAV route northward to the FONIA, ND, Fix.

The FAA also proposes to establish RNAV route T–468 between the Hill City, KS, VORTAC and the LEWRP, MO, WP located near the Kirksville, MO, area. The new T-route would, in part, mitigate the proposed removal of the V–216 airway segment affected by the planned Pawnee City VOR decommissioning, reduce ATC sector workload and complexity, and reduce pilot-to-controller communication. The new T-route also would provide RNAV equipped aircraft an ATS route alternative and support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

Finally, the Pawnee City, NE, low altitude reporting point would no longer be required by ATC after the Pawnee City VOR is decommissioned and the proposed route amendments implemented; hence, the reporting point is proposed to be removed as well.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Jet Route J–64; amend VOR Federal airways V–50, V–71, V–216, and V–307; amend RNAV route T–286; establish RNAV route T–468; and revoke J–130, J–192, V–553, and the Pawnee City, NE, low altitude reporting point. The ATS route and reporting point amendments and revocations are due to the planned decommissioning of the Pawnee City, NE, VOR. The proposed ATS route and low altitude reporting point actions are described below.

J–64: J–64 currently extends between the Los Angeles, CA, VORTAC and the intersection of the Ravine, PA, VORTAC 102° and Lancaster, PA, VOR/Distance Measuring Equipment (VOR/DME) 044° radials (SARAA Fix). The FAA proposes to remove the route segment overlying the Pawnee City, NE, VORTAC between the Hill City, KS, VORTAC and the Lamoni, IA, VOR/DME. The unaffected portions of the existing route would remain as charted.

J–130: J–130 currently extends between the Mc Cook, NE, VOR/DME and the Pawnee City, NE, VORTAC. The FAA proposes to remove the route in its entirety.

J–192: J–192 currently extends between the Goodland, KS, VORTAC and the Iowa City, IA, VOR/DME. The FAA proposes to remove the route in its entirety.

V–50: V–50 currently extends between the Hastings, NE, VOR/DME and the Dayton, OH, VOR/DME. The FAA proposes to remove the airway segment overlying the Pawnee City VORTAC between the Hastings, NE, VOR/DME and the St Joseph, MO, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–71: V–71 currently extends between the Fighting Tiger, LA, VORTAC and the O'Neill, NE, VORTAC; and between the Pierre, SD, VORTAC and the Williston, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the Pawnee City VORTAC between the Topeka, KS, VORTAC and the Lincoln, NE, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–216: V–216 currently extends between the Lamar, CO, VOR/DME and the Janesville, WI, VOR/DME. The FAA proposes to remove the airway segment overlying the Pawnee City VORTAC between the Mankato, KS, VORTAC and the Lamoni, IA, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–307: V–307 currently extends between the Chanute, KS, VORTAC and the Omaha, IA, VORTAC. The FAA proposes to remove the airway segment overlying the Pawnee City VORTAC between the Emporia, KS, VORTAC and the Omaha, IA, VORTAC. The unaffected portion of the existing airway would remain as charted.

V–553: V–553 currently extends between the Salina, KS, VORTAC and the Pawnee City, KS, VORTAC. The FAA proposes to remove the airway in its entirety.

T–286: T–286 currently extends between the Rapid City, SD, VORTAC and the BOWLR, KS, Fix. The FAA proposes to replace the Pawnee City, NE, VORTAC with the HTHWY, NE, WP being established in close proximity of the Pawnee City VORTAC; remove the EFFEX, NE, Fix from the route description since it does not denote a route turn point; and extend the route northward to the FONIA, ND, Fix via the JELRO, SD, Fix and the Dickenson, ND, VORTAC. The amended route would provide RNAV routing between the Williston, ND, area and the Atchison, KS, area. The full RNAV T-route description is listed in ''The Proposed Amendment'' section, below.

T–468: T–468 is a new RNAV route proposed to extend between the Hill City, KS, VORTAC and the LEWRP, MO, WP. This new T-route would provide RNAV routing from the Hill City, KS, area eastward to the Kirksville, MO, area via the KNSAS, KS, WP being established and the Lamoni, IA, VOR/DME. The full RNAV T-route description is listed in ''The Proposed Amendment'' section, below.

Pawnee City, NE: The FAA proposes to remove the Pawnee City, NE, low altitude reporting point as it would no longer be required by ATC as a result of the Pawnee City VOR being decommissioned.

All NAVAID radials listed in the ATS route descriptions below are unchanged and stated in True degrees.

Jet Routes are published in paragraph 2004, VOR Federal airways are published in paragraph 6010(a), RNAV

T-routes are published in paragraph 6011, and Domestic Low Altitude Reporting Points are published in paragraph 7001 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 ATS routes and reporting point listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–64 [Amended]

From Los Angeles, CA; INT Los Angeles 083° and Hector, CA, 226° radials; Hector; Peach Springs, AZ; Tuba City, AZ; Rattlesnake, NM; Pueblo, CO; to Hill City, KS. From Lamoni, IA; Bradford, IL; INT Bradford 089° and Fort Wayne, IN, 280° radials; Fort Wayne; Ellwood City, PA; Ravine, PA; to INT Ravine 102° and Lancaster, PA, 044° radials.

* * * * *

J–130 [Removed]

* * * * *

J–192 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–50 [Amended]

From St. Joseph, MO; Kirksville, MO; Quincy, IL; Spinner, IL; Adders, IL; Terre Haute, IN; Brickyard, IN; to Dayton, OH.

* * * * *

V–71 [Amended]

From Fighting Tiger, LA; Natchez, MS; Monroe, LA; El Dorado, AR; Hot Springs, AR; INT Hot Springs 358° and Harrison, AR, 176° radials; Harrison; Springfield, MO; Butler, MO; to Topeka, KS. From Lincoln, NE; Columbus, NE; to O'Neill, NE. From Pierre, SD; Bismarck, ND; to Williston, ND.

* * * * *

V–216 [Amended]

From Lamar, CO; Hill City, KS; to Mankato, KS. From Lamoni, IA; Ottumwa, IA; Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

* * * * *

V–307 [Amended]

From Chanute, KS; to Emporia, KS.

* * * * *

V–553 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–286 FONIA, ND TO BOWLR, KS [AMENDED]

FONIA, ND	FIX	(Lat. 48°15′35.07″ N, long. 103°10′37.54″ W)
Dickinson, ND (DIK)	VORTAC	(Lat. 46°51′36.14″ N, long. 102°46′24.60″ W)
JELRO, SD	FIX	(Lat. 45°48′43.83″ N, long. 102°51′46.96″ W)
Rapid City, SD (RAP)	VORTAC	(Lat. 43°58′33.74″ N, long. 103°00′44.38″ W)
Gordon, NE (GRN)	NDB	(Lat. 42°48′03.90″ N, long. 102°10′45.82″ W)
Thedford, NE (TDD)	VOR/DME	(Lat. 41°58′53.99″ N, long. 100°43′08.52″ W)
BOKKI, NE	FIX	(Lat. 41°39′54.99″ N, long. 099°52′17.00″ W)
Grand Island, NE (GRI)	VOR/DME	(Lat. 40°59′02.50″ N, long. 098°18′53.20″ W)
HTHWY, NE	WP	(Lat. 40°12′01.96″ N, long. 096°12′22.51″ W)
Robinson, KS (RBA)	DME	(Lat. 39°51′03.00″ N, long. 095°25′23.00″ W)
BOWLR, KS	FIX	(Lat. 39°37′21.29″ N, long. 095°11′00.26″ W)

* * * * * * *

T–468 HILL CITY, KS (HLC) TO LEWRP, MO [NEW]

Hill City, KS (HLC)	VORTAC	(Lat. 39°15′31.49″ N, long. 100°13′33.06″ W)
KNSAS, KS	WP	(Lat. 39°48′22.62″ N, long. 098°15′36.62″ W)
Lamoni, IA (LMN)	VOR/DME	(Lat. 40°35′48.35″ N, long. 093°58′03.33″ W)
LEWRP, MO	WP	(Lat. 40°08′06.06″ N, long. 092°35′30.15″ W)

Paragraph 7001 Domestic Low Altitude Reporting Points.

* * * * *

Pawnee City, NE [Removed]

* * * * *

Issued in Washington, DC, on June 3, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–12322 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–HQ–NWRS–2022–0055; FXRS12610900000–223–FF09R20000]

RIN 1018–BF66

2022–2023 Station-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Consistent with the steadfast commitment to access to our National Wildlife Refuges and continued efforts to provide hunting and fishing opportunities, we, the U.S. Fish and Wildlife Service (Service), propose to open, for the first time, two National Wildlife Refuges (NWRs) that are currently closed to hunting and sport fishing. In addition, we propose to open or expand hunting or sport fishing at 17 other NWRs and add pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing for the 2022–2023 season. We also propose to make changes to existing station-specific regulations in order to reduce the regulatory burden on the public, increase access for hunters and anglers on Service lands and waters, and comply with a Presidential mandate for plain language standards. Finally, the best available science, analyzed as part of this proposed rulemaking, indicates that lead ammunition and tackle may have negative impacts on both wildlife and human health, and that those impacts are more acute for some species. Therefore, while the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, this rulemaking provides a measured approach in not adding to the use of lead on refuge lands. The Service will seek input from partners in methods to address the use of lead and commits to a transparent process in doing so.

DATES:

Written comments: We will accept comments received or postmarked on or before August 8, 2022.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by August 8, 2022.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, type in FWS–HQ–NWRS–2022–0055, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on ''Comment.''
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–HQ–NWRS–2022–0055, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information).

Information collection requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** 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. Please provide a copy of your comments to Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0140 in the subject line of your comments.

Supporting documents: For information on a specific refuge's or hatchery's public use program and the conditions that apply to it, contact the respective regional office at the address or phone number given in Available Information for Specific Stations under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kate Harrigan, (703) 358–2440.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended (Administration Act), closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review hunting and sport fishing programs to determine whether to include additional stations or whether individual station regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to station-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of station purposes or the Service's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations at part 32 (50 CFR part 32), and on hatcheries at part 71 (50 CFR part 71). We regulate hunting and sport fishing to:

- Ensure compatibility with refuge and hatchery purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other values;
- Ensure visitor safety; and
- Provide opportunities for fish- and wildlife-dependent recreation.

On many stations where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other stations, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under Statutory Authority, below. We issue station-specific hunting and sport fishing regulations when we open wildlife refuges and fish hatcheries to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations may list the wildlife species

that you may hunt or fish; seasons; bag or creel (container for carrying fish) limits; methods of hunting or sport fishing; descriptions of areas open to hunting or sport fishing; and other provisions as appropriate.

Statutory Authority

The Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105–57), governs the administration and public use of refuges, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k-4) (Recreation Act) governs the administration and public use of refuges and hatcheries.

Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System and Hatchery System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge or hatchery lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop station-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge or hatchery and the Refuge and Hatchery System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired land through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR parts 32 and 71. We ensure continued compliance by the development of comprehensive conservation plans and step-down management plans, and by annual review of hunting and sport fishing programs and regulations.

Proposed Amendments to Existing Regulations

Updates to Hunting and Fishing Opportunities on NWRs

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that we would update since the last time we published a rule amending these regulations (86 FR 48822; August 31, 2021) and that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We propose this to better inform the general public of the regulations at each station, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR parts 32, visitors to our stations may find them reiterated in literature distributed by each station or posted on signs.

TABLE 1—PROPOSED CHANGES FOR 2022–2023 HUNTING/SPORT FISHING SEASON

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Baskett Slough NWR	Oregon	E	Closed	Closed	Closed.
Blackwater NWR	Maryland	E	O	E	Already Open.
Canaan Valley NWR	West Virginia	Already Open	Already Open	E	Already Open.
Chincoteague NWR	Virginia	O	O	O/E	Already Open.
Crab Orchard NWR	Illinois	E	Already Open	Already Open	Already Open.
Eastern Neck NWR	Maryland	Closed	O	E	Already Open.
Erie NWR	Pennsylvania	O	O	O	E.
Ernest F. Hollings ACE Basin NWR	South Carolina	Already Open	Closed	E	Already Open.
Great Thicket NWR	New York/Maine	O	O	O	Closed.
James River NWR	Virginia	O	Already Open	Already Open	Already Open.
Patoka River NWR and Management Area.	Indiana	E	E	E	E.
Patuxent Research Refuge	Maryland	E	E	E	Already Open.
Rachel Carson NWR	Maine	Already Open	C	E	Already Open.
Rappahannock River Valley NWR	Virginia	O	Already Open	Already Open	Already Open.
San Diego NWR	California	Closed	O	O	Closed.
Shawangunk Grasslands NWR	New York	Closed	Closed	O/E	Closed.
Trustom Pond NWR	Rhode Island	Already Open	O	O	Already Open.
Turnbull NWR	Washington	Already Open	Closed	O	Closed.
Wallops Island NWR	Virginia	O	O	O	Closed.

Key:
N = New station opened (New Station).

O = New species and/or new activity on a station previously open to other activities (Opening).
E = Station already open to activity adds new lands/waters, modifies areas open to hunting or fishing, extends season dates, adds a targeted hunt, modifies season dates, modifies hunting hours, etc. (Expansion).
C = Station closing certain species or the activity on some or all acres (Closing).

The changes for the 2022–2023 hunting/fishing season noted in the table above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination (for refuges), and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

The Service remains concerned that lead is an important issue and will continue to appropriately evaluate and regulate lead ammunition and tackle on Service lands and waters. The best available science, analyzed as part of this proposed rulemaking, indicates that lead ammunition and tackle may have negative impacts on both wildlife and human health. Therefore, while the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, this rulemaking does not include any opportunities that would increase the use of lead on refuge lands. Patoka River NWR is proposing to require non-lead ammunition and tackle by fall 2026, and if adopted in the final rule, this refuge-specific proposed regulation would take effect on September 1, 2026. Blackwater, Canaan Valley, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs have analyzed the phase-out of lead ammunition and tackle by fall 2026 for their proposed hunting and fishing opportunities in their individual environmental assessments and hunting and fishing plans, and plan to propose the regulatory requirement for using non-lead ammunition in the 2026–2027 annual rule.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish-consumption advisories on the internet at *https://www.epa.gov/fish-tech.*

Request for Comments

You may submit comments and materials on this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment on *https://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—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. We will post all hardcopy comments on *https://www.regulations.gov.*

Required Determinations

Clarity of This Proposed Rule

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking is not significant.

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would open or expand hunting and sport fishing on 19 NWRs. As a result, visitor use for wildlife-dependent recreation on these stations will change. If the stations establishing new programs were a pure addition to the current supply of those activities, it would mean an estimated maximum increase of 2,769 user days (one person per day participating in a recreational opportunity; see table 2). Because the participation trend is flat in these activities, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the

activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED MAXIMUM CHANGE IN RECREATION OPPORTUNITIES IN 2022–2023

[2021 Dollars in thousands]

Station	Additional hunting days	Additional fishing days	Additional expenditures
Baskett Slough NWR	270		$9.5
Blackwater NWR	100		3.5
Canaan Valley NWR	25		0.9
Chincoteague NWR	75		2.6
Crab Orchard NWR	60		2.1
Eastern Neck NWR	15		0.5
Erie NWR	25	30	2.0
Ernest F. Hollings ACE Basin NWR			0.0
Great Thicket NWR	175		6.2
James River NWR	75		2.6
Patoka River NWR and Management Area	17	3	0.6
Patuxent Research Refuge	100		3.6
Rachel Carson NWR	10		0.4
Rappahannock River Valley NWR	100		3.5
San Diego NWR	1,002		35.3
Shawangunk Grasslands NWR	75		2.6
Trustom Pond NWR	60		2.1
Turnbull NWR	560		19.7
Wallops Island NWR	25		0.9
Total	2,769	33	98.6

To the extent visitors spend time and money in the area of the station that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2016 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $99,000 in recreation-related expenditures (see table 2, above). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.51) derived from the report ''Hunting in America: An Economic Force for Conservation'' and for fishing activities (2.51) derived from the report ''Sportfishing in America'' yields a total maximum economic impact of approximately $248,000 (2021 dollars) (Southwick Associates, Inc., 2018). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending will be ''new'' money coming into a local economy; therefore, this spending will be offset with a decrease in some other sector of the local economy. The net gain to the local economies will be no more than $248,000 and likely less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns will not add new money into the local economy and, therefore, the real impact will be on the order of about $50,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait-and-tackle shops, and similar businesses) may be affected by some increased or decreased station visitation. A large percentage of these retail trade establishments in the local communities around NWRs qualify as small businesses (see table 3, below). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect at most $99,000 to be spent in total in the refuges' local economies. The maximum increase will be less than one-tenth of 1 percent for local retail trade spending (see table 3, below). Table 3 does not include entries for those NWRs for which we project no changes in recreation opportunities in 2022–2023; see table 2, above.

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2022–2023

[Thousands, 2021 dollars]

Station/county(ies)	Retail trade in [1] 2017	Estimated maximum addition from new activities	Addition as % of total	Establishments in [1] 2017	Establishments with fewer than 10 employees in [1] 2017
Baskett Slough:					
Polk, OR	$454,935	$10	<0.1	120	79

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2022–2023—Continued

[Thousands, 2021 dollars]

Station/county(ies)	Retail trade in [1] 2017	Estimated maximum addition from new activities	Addition as % of total	Establishments in [1] 2017	Establishments with fewer than 10 employees in [1] 2017
Blackwater:					
Wicomico, MD	1,983,533	2	<0.1	376	226
Dorchester, MD	541,191	2	<0.1	100	74
Canaan Valley:					
Grant, WV	118,297	<1	<0.1	42	28
Tucker, WV	70,798	<1	<0.1	28	20
Chincoteague:					
Accomack, VA	405,539	3	<0.1	159	122
Crab Orchard:					
Williamson, IL	1,298,962	2	<0.1	259	168
Eastern Neck:					
Kent, MD	216,681	1	<0.1	87	57
Erie:					
Crawford, PA	1,095,512	2	<0.1	293	197
Great Thicket:					
Dutchess, NY	4,321,906	3	<0.1	1,084	784
York, ME	2,972,219	3	<0.1	871	640
James River:					
Prince George, VA	317,610	1	<0.1	65	42
Patoka River:					
Pike, IN	70,298	<1	<0.1	32	23
Gibson, IN	554,605	<1	<0.1	116	76
Patuxent Research Refuge:					
Arundel, MD	10,437,225	2	<0.1	1,984	1,216
Prince George, MD	11,591,063	2	<0.1	2,361	1,482
Rachel Carson:					
York, ME	2,972,219	<1	<0.1	871	640
Cumberland, ME	7,773,235	<1	<0.1	1,454	936
Rappahannock River Valley:					
Essex, VA	244,493	1	<0.1	65	48
King George, VA	379,429	1	<0.1	64	42
Westmoreland, VA	128,188	1	<0.1	44	31
Richmond, VA	2,498,764	1	<0.1	795	578
Caroline, VA	339,291	1	<0.1	63	48
San Diego:					
San Diego, CA	51,587,171	35	<0.1	9,423	6,245
Shawangunk Grasslands:					
Ulster, NY	2,841,612	3	<0.1	747	546
Trustom Pond:					
Washington, RI	2,314,122	2	<0.1	524	372
Turnbull:					
Spokane, WA	8,674,550	20	<0.1	1,627	1,036
Wallops Island:					
Accomack, VA	405,539	<1	<0.1	159	122

[1] U.S. Census Bureau.

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected stations. Therefore, we certify that this rule, as proposed, will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not

affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending at NWRs. Therefore, if adopted, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would affect only visitors at NWRs, and would describe what they can do while they are on a Service station.

Federalism (E.O. 13132)

As discussed under *Regulatory Planning and Review* and *Unfunded Mandates Reform Act,* above, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would add 2 NWRs to the list of refuges open to hunting and sport fishing and open or expand hunting or sport fishing at 17 other NWRs, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. We coordinate recreational use on NWRs and national fish hatcheries (NFHs) with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act (PRA)

This proposed rule contains existing information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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. The OMB has reviewed and approved the information collection requirements associated with hunting and sport fishing activities across the National Wildlife Refuge System and National Fish Hatchery System and assigned the following OMB control numbers:

- 1018–0140, ''Hunting and Sport Fishing Application Forms and Activity Reports for National Wildlife Refuges, 50 CFR 25.41, 25.43, 25.51, 26.32, 26.33, 27.42, 30.11, 31.15, 32.1 to 32.72'' (Expires 12/31/2023),
- 1018–0102, ''National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, & 36'' (Expires 01/31/2024),
- 1018–0135, ''Electronic Federal Duck Stamp Program'' (Expires 01/31/2023),
- 1018–0093, ''Federal Fish and Wildlife Permit Applications and Reports—Management Authority; 50 CFR 13, 15, 16, 17, 18, 22, 23'' (Expires 08/31/2023), and
- 1024–0252, ''The Interagency Access Pass and Senior Pass Application Processes'' (Expires 09/30/2023).

In accordance with the 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 our proposal to revise OMB control number 1018–0140. 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.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(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) 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, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can 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.

The Service's proposed rule (RIN 1018–BF66) would open, for the first time, hunting and sport fishing on two NWRs and open or expand hunting and sport fishing at 17 other NWRs. The additional burden associated with these new or expanded hunting and sport fishing opportunities, as well as the revised information collections identified below, require OMB approval.

Many refuges offer hunting and sport fishing activities without collecting any information. Those refuges that do collect hunter and angler information do so seasonally, usually once a year at the beginning of the hunting or sport fishing season. Some refuges may elect to collect the identical information via a

non-form format (letter, email, or through discussions in person or over the phone). Some refuges provide the form electronically over the internet. In some cases, because of high demand and limited resources, we often provide hunt opportunities by lottery, based on dates, locations, or type of hunt.

The proposed changes to the existing information collections identified below require OMB approval:

Hunting Applications/Permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System)

Form 3–2439 collects the following information from individuals seeking hunting experiences on the NWRs:

• *Lottery Application:* Refuges who administer hunting via a lottery system will use Form 3–2439 as the lottery application. If the applicant is successful, the completed Form 3–2439 also serves as their permit application, avoiding a duplication of burden on the public filling out two separate forms.

• *Date of application:* We often have application deadlines, and this information helps staff determine the order in which we received the applications. It also ensures that the information is current.

• *Methods:* Some refuges hold multiple types of hunts, *i.e.,* archery, shotgun, primitive weapons, etc. We ask for this information to identify opportunity(ies) a hunter is applying for.

• *Species Permit Type:* Some refuges allow only certain species, such as moose, elk, or bighorn sheep, to be hunted. We ask hunters to identify which species they are applying to hunt for.

• *Applicant information:* We collect name, address, phone number(s), and email so we can contact the applicant/permittee either during the application process, when the applicant is successful in a lottery drawing, or after receiving a permit.

• *Party Members:* Some refuges allow the permit applicant to include additional hunters in their group. We collect the names of all additional hunters, when allowed by the refuge.

• *Parent/Guardian Contact Information:* We collect name, relationship, address, phone number(s), and email for a parent/guardian of youth hunters. We ask for this information in the event of an emergency.

• *Date:* We ask hunters for their preferences for hunt dates.

• *Hunt/Blind Location:* We ask hunters for their preferences for hunt units, areas, or blinds.

• *Special hunts:* Some refuges hold special hunts for youth, hunters who are disabled, or other underserved populations. We ask hunters to identify if they are applying for these special hunts. For youth hunts, we ask for the age of the hunter at the time of the hunt.

• *Signature and date:* To confirm that the applicant (and parent/guardian, if a youth hunter) understands the terms and conditions of the permit.

Proposed revisions to FWS Form 3–2439:

With this submission, we propose to add an option for refuges to allow mobility impaired applicants to reserve specific hunting blinds upon providing proof of disability. The refuge will not retain the proof of disability. The documentation will be shredded upon approval of the blind reservation.

Self-Clearing Check-in Permit (FWS Form 3–2405)

FWS Form 3–2405 has three parts:

• Self-Clearing Daily Check-in Permit. Each user completes this portion of the form (date of visit, name, and telephone numbers) and deposits it in the permit box prior to engaging in any activity on the refuge.

• Self-Clearing Daily Visitor Registration Permit. Each user must complete the front side of the form (date, name, city, State, zip code, and purpose of visit) and carry this portion while on the refuge. At the completion of the visit, each user must complete the reverse side of the form (number of hours on refuge, harvest information (species and number), harvest method, angler information (species and number), and wildlife sighted (*e.g.,* black bear and hog)) and deposit it in the permit box.

• Self-Clearing Daily Vehicle Permit. The driver and each user traveling in the vehicle must complete this portion (date) and display in clear view in the vehicle while on the refuge.

We use FWS Form 3–2405 to collect:

• Information on the visitor (name, address, and contact information). We use this information to identify the visitor or driver/passenger of a vehicle while on the refuge. This is extremely valuable information should visitors become lost or injured. Law enforcement officers can easily check vehicles for these cards in order to determine a starting point for the search or to contact family members in the event of an abandoned vehicle. Having this information readily available is critical in a search and rescue situation.

• Purpose of visit (hunting, sport fishing, wildlife observation, wildlife photography, auto touring, birding, hiking, boating/canoeing, visitor center, special event, environmental education class, volunteering, other recreation). This information is critical in determining public use participation in wildlife management programs. This not only allows the refuge to manage its hunt and other visitor use programs, but also to increase and/or improve facilities for non-consumptive uses that are becoming more popular on refuges. Data collected will also help managers better allocate staff and resources to serve the public as well as develop annual performance measures.

• Success of harvest by hunters/anglers (number and type of harvest/caught). This information is critical to wildlife management programs on refuges. Each refuge will customize the form by listing game species and incidental species available on the refuge, hunting methods allowed, and data needed for certain species (*e.g.,* for deer, whether it is a buck or doe and the number of points; or for turkeys, the weight and beard and spur lengths).

• Visitor observations of incidental species. This information will help managers develop annual performance measures and provides information to help develop resource management planning.

• Photograph of animal harvested (specific refuges only). This requirement documents the sex of animal prior to the hunter being eligible to harvest the opposite sex (where allowed).

• Date of visit and/or area visited.

• Comments. We encourage visitors to comment on their experience.

Proposed revisions to FWS Form 3–2405:

With this submission, we propose the addition of a question asking hunters to provide the total number of hunt days on the refuge (at the conclusion of their hunting activities). Refuge management will use this information to monitor and evaluate hunt quality and resource impacts.

We will propose to renew, without change, the remaining information collections identified below currently approved by OMB:

Sport Fishing Application/Permit (FWS Form 3–2358, ''Sport Fishing-Shrimping-Crabbing-Frogging Permit Application'')

Form 3–2358 allows the applicant to choose multiple permit activities, and requests the applicant provide the State fishing license number. The form provides the refuge with more flexibility to insert refuge-specific requirements/instructions, along with a permit number and dates valid for season issued.

We collect the following information from individuals seeking sport fishing experiences:

• *Date of application:* We often have application deadlines, and this information helps staff determine the order in which we received the applications. It also ensures that the information is current.

• *State fishing license number:* We ask for this information to verify the applicant is legally licensed by the State (where required).

• *Permit Type:* On sport fishing permits, we ask what type of activity (crabbing, shrimping, frogging, etc.) is being applied for.

• *Applicant information:* We collect name, address, phone number(s), and email so we can contact the applicant/permittee either during the application process or after receiving a permit.

• *Signature and date:* To confirm that the applicant (and parent/guardian, if a youth hunter) understands the terms and conditions of the permit.

Harvest/Fishing Activity Reports

We have one harvest/fishing activity report, FWS Form 3–2439, to be completed by hunters which addresses the species unique to the refuge being hunted. We ask users to report on their success after their experience so that we can evaluate hunt quality and resource impacts.

We collect the following information on the harvest reports:

• State-issued hunter identification (ID)/license number (*Note:* Refuges/hatcheries that rely on the State agency to issue hunting permits are not required to collect the permittee's personal identifying information (PII) on the harvest form. Those refuges/hatcheries may opt to collect only the State ID number assigned to the hunter in order to match harvest data with their issued permit. Refuges/hatcheries will collect either hunter PII or State-issued ID number, but not both.).

• Species observed. Data will be used by refuge/hatchery staff to document the presence of rare or unusual species (*e.g.,* endangered or threatened species, or invasive species).

• Permit number/type. Data will be used to link the harvest report to the issued permit.

• Hunt Tag Number. Data will be used to link the harvest report to the species-specific hunt tag.

• Number of youth (younger than 18) in party. Data will be used to better understand volume of youth hunting on a refuge/hatchery. Specific hunter names are not collected, just total number of youths in hunting party.

• Harvested by. Data will be used to determine ratio of adults to youth hunters. Specific hunter names are not collected.

Labeling/Marking Requirements

As a condition of the permit, some refuges require permittees to label hunting and/or sport fishing gear used on the refuge. This equipment may include items such as the following: tree stands, blinds, or game cameras; hunting dogs (collars); flagging/trail markers; boats; and/or sport fishing equipment such as jugs, trotlines, and crawfish or crab traps. Refuges require the owner to label their equipment with their last name, the State-issued hunting/fishing license number, and/or hunting/fishing permit number. Refuges may also require equipment for youth hunters include ''YOUTH'' on the label. This minimal information is necessary in the event the refuge needs to contact the owner.

Required Notifications

On occasion, hunters may find their game has landed outside of established hunting boundaries. In this situation, hunters must notify an authorized refuge employee to obtain consent to retrieve the game from an area closed to hunting or entry only upon specific consent. Certain refuges also require hunters to notify the refuge manager when hunting specific species (*e.g.,* black bear, bobcat, or eastern coyote) with trailing dogs. Refuges encompassing privately owned lands, referred to as ''easement overlay refuges'' or ''limited-interest easement refuges,'' may also require the hunter to obtain written or oral permission from the landowner prior to accessing the land.

Due to the wide range of hunting and sport fishing opportunities offered on NWRs and NFHs, the refuges and fish hatcheries may customize the forms to remove any fields that are not pertinent to the recreational opportunities they offer. Refuges will not add any new fields to the forms, but the order of the fields may be reorganized. Refuges may also customize the forms with instructions and permit conditions specific to a particular unit for the hunting/sport fishing activity. Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified above in **ADDRESSES**.

Title of Collection: Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges and National Fish Hatcheries, 50 CFR parts 32 and 71.

OMB Control Number: 1018–0140.

Form Number: FWS Forms 3–2358, 3–2405, 3–2439, and 3–2542.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Estimated Annual Non-hour Burden Cost: $87,365 (application fees associated with hunting and sport fishing activities).

Activity	Annual number of responses	Completion time per response (minutes)	Total annual burden hours *
Fish/Crab/Shrimp Application/Permit (Form 3–2358)	2,662	5	222
Harvest Reports (Forms 3–2542)	591,577	15	147,894
Hunt Application/Permit (Form 3–2439)	361,359	10	60,227
Labeling/Marking Requirements	2,341	10	390
Required Notifications	498	30	249
Self-Clearing Check-In Permit (Form 3–2405)	673,618	5	56,135
Totals	1,632,055	.....	265,117

* Rounded.

The above burden estimates indicate an expected total of 1,632,055 responses and 265,117 burden hours across all of our forms. These totals reflect expected increases of 1,652 responses and 270 burden hours relative to our previous information collection request. We expect minimal burden increases as a direct result of the increased number of hunting and fishing opportunities on Service stations under this proposed rule.

Send your comments and suggestions on this information collection by the date indicated under *Information collection requirements* in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0140 in the subject line of your comments.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans and step-down management plans—which would include hunting and/or fishing plans—for public use of refuges and hatcheries, and prior to implementing any new or revised public recreation program on a station as identified in 50 CFR 26.32. We complied with section 7 for each of the stations affected by this proposed rulemaking.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to station-specific hunting and fishing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge or hatchery to the list of areas open to hunting and fishing in 50 CFR parts 32 and 71, we develop hunting and fishing plans for the affected stations. We incorporate these proposed station hunting and fishing activities in the station comprehensive conservation plan and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these comprehensive conservation plans and step-down plans in compliance with section 102(2)(C) of NEPA, the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500 through 1508, and the Department of Interior's NEPA regulations 43 CFR part 46. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the stations at the addresses provided below.

Available Information for Specific Stations

Individual refuge and hatchery headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge or hatchery, contact the appropriate Service office for the States listed below:

Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6203.

Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW, Albuquerque, NM 87103; Telephone (505) 248–6635.

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone (612) 713–5476.

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7356.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8307.

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–4377.

Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 767–9241.

Primary Author

Kate Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 115–20, 131 Stat. 86.

■ 2. Amend § 32.7 by:

■ a. Redesignating paragraphs (e)(17) through (23) as paragraphs (e)(18) through (24) and adding a new paragraph (e)(17);

■ b. Redesignating paragraphs (s)(2) through (7) as paragraphs (s)(3) through (8) and adding a new paragraph (s)(2); and

■ d. Redesignating paragraphs (ff)(3) through (10) as paragraphs (ff)(4) through (11) and adding a new paragraph (ff)(3).

The additions read as follows:

§ 32.7 What refuge units are open to hunting and/or sport fishing?

* * * * *

(e) * * *

(17) San Diego National Wildlife Refuge.

* * * * *

(s) * * *

(2) Great Thicket National Wildlife Refuge.

* * * * *

(ff) * * *

(3) Great Thicket National Wildlife Refuge.

* * * * *

■ 3. Amend § 32.24 by:

■ a. Revising paragraphs (m)(1)(ix) and (m)(4)(i);

■ b. Redesignating paragraphs (q) through (w) as (r) through (x);
■ c. Adding new paragraph (q); and
■ d. Revising newly redesignated paragraphs (t)(2)(ii) and (w)(2)(ii).

The revisions and addition read as follows:

§ 32.24 California.

* * * * *

(m) * * *

(1) * * *

(ix) We only allow access to the hunt area by foot and nonmotorized cart.

* * * * *

(4) * * *

(i) We prohibit fishing from October 1 to January 31.

* * * * *

(q) San Diego National Wildlife Refuge—(1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, mourning and white-winged dove, spotted and ringed turtle dove, Eurasian collared-dove, brush rabbit, cottontail rabbit, and jackrabbit on designated areas of the refuge subject to the following conditions:

(i) Archery hunting of quail is limited to September 1 to the closing date established by the California Department of Fish and Wildlife (CDFW).

(ii) Hunting of brush rabbit and cottontail rabbit is limited to September 1 to the closing date established by CDFW.

(iii) Hunting of Eurasian collared-dove and jackrabbit is limited to September 1 to the last day of February.

(iv) We allow shotguns and archery only. Falconry is prohibited.

(v) You may not possess more than 25 shot shells while in the field.

(vi) We allow the use of dogs when hunting upland game.

(3) *Big game hunting.* We allow hunting of mule deer on designated areas of the refuge.

(4) [Reserved]

* * * * *

(t) * * *

(2) * * *

(ii) The conditions set forth at paragraphs (t)(1)(ii) and (iii) of this section apply.

* * * * *

(w) * * *

(2) * * *

(ii) The conditions set forth at paragraphs (w)(1)(i) through (viii) of this section apply.

* * * * *

■ 4. Amend § 32.29 by revising paragraph (a)(3) to read as follows:

§ 32.29 Georgia.

* * * * *

(a) * * *

(3) *Big game hunting.* We allow alligator hunting on designated areas of the refuge subject to the following condition: We only allow alligator hunting on dates outlined by the State of Georgia during the first two weekends (from legal sunset Friday through legal sunrise Monday) of the State alligator season.

* * * * *

■ 5. Amend § 32.33 by revising paragraph (c) to read as follows:

§ 32.33 Indiana.

* * * * *

(c) Patoka River National Wildlife Refuge and Management Area—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, merganser, coot, woodcock, dove, snipe, rail, and crow on designated areas of the refuge and the White River Wildlife Management Area subject to the following conditions:

(i) You must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) We prohibit hunting and the discharge of a weapon within 150 yards (137 meters) of any dwelling or any building that may be occupied by people, pets, or livestock and within 50 yards (45 meters) of all designated public use facilities, including, but not limited to, parking areas and established hiking trails listed in the refuge hunting and fishing brochure.

(iii) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field.

(2) *Upland game hunting.* We allow hunting of bobwhite quail, pheasant, cottontail rabbit, squirrel (gray and fox), red and gray fox, coyote, opossum, striped skunk, and raccoon subject to the following conditions:

(i) We allow the use of dogs for hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) The conditions set forth at paragraphs (c)(1)(i) through (iii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) through (iii) of this section apply.

(ii) On the Columbia Mine Unit, you may only hunt white-tailed deer during the first week (7 days) of the following seasons, as governed by the State: archery, firearms, and muzzleloader.

(iii) On the Columbia Mine Unit, you may leave portable tree stands overnight only when the unit is open to hunting and for a 2-day grace period before and after the special season.

(iv) On the Columbia Mine Unit, if you use a rifle to hunt, you may use only rifles allowed by State regulations for hunting on public land.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We allow fishing only with rod and reel, pole and line, bow and arrow, or crossbow.

(iii) The minimum size limit for largemouth bass on Snakey Point Marsh and on the Columbia Mine Unit is 14 inches (35.6 centimeters).

(iv) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(v) You must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

(vi) The condition set forth at paragraph (c)(1)(iii) of this section applies.

* * * * *

■ 6. Amend § 32.38 by:
■ a. Redesignating paragraphs (b) through (g) as (c) through (h);
■ b. Adding new paragraph (b);
■ c. Revising newly redesignated paragraphs (c)(2)(i), (c)(3)(i), (f)(2), (f)(3)(i), (f)(3)(iii), and (f)(3)(vi);
■ d. Adding new paragraph (f)(3)(vii); and
■ e. Revising newly redesignated paragraphs (g)(2)(i) and (g)(3)(i).

The additions and revisions read as follows:

§ 32.38 Maine.

* * * * *

(b) Great Thicket National Wildlife Refuge—(1) *Migratory game bird hunting.* We allow hunting of duck, sea duck, dark goose, light goose, woodcock, and coot on designated areas of the refuge subject to the following conditions:

(i) You must obtain and sign a refuge hunt information sheet and carry the information sheet at all times.

(ii) We allow the use of dogs consistent with State regulations.

(iii) We allow access for hunting from one hour before legal hunting hours until one hour after legal hunting hours.

(iv) We allow take of migratory birds by falconry on the refuge during State seasons.

(2) *Upland game hunting.* We allow hunting of grouse and the incidental take of fox and coyote while deer hunting on designated areas of the

refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (b)(1)(iii) of this section apply.

(ii) We prohibit night hunting of coyote.

(iii) We allow take of grouse by falconry on the refuge during the State season.

(3) *Big game hunting.* We allow hunting of wild turkey and white-tailed deer, and the incidental take of fox and coyote while deer hunting, on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (b)(1)(iii) of this section apply.

(ii) All species harvested on the refuge must be retrieved.

(4) [Reserved]

(c) * * *

(2) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii) (except for hunters pursuing raccoon and coyote at night), (iii), and (iv) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), and (iv) of this section apply.

* * * * *

(f) * * *

(2) *Upland game hunting.* We allow hunting of grouse, fox, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i) and (iii) of this section apply.

(ii) We allow take of grouse by falconry on the refuge during State seasons.

(3) * * *

(i) The conditions as set forth at paragraphs (f)(1)(i) and (iv) of this section apply.

* * * * *

(iii) We allow turkey hunting during the fall season as designated by the State. Turkey hunting in the spring is a mentor-led hunt only.

* * * * *

(vi) We allow access for hunting from 1 hour before legal hunting hours until 1 hour after legal hunting hours.

(vii) All species harvested on the refuge must be retrieved.

* * * * *

(g) * * *

(2) * * *

(i) The conditions set forth at paragraphs (g)(1)(i) through (iv) (except for hunters pursing raccoon or coyote at night) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (g)(1)(i), (ii), and (iv) of this section apply.

* * * * *

■ 7. Amend § 32.39 by:

■ a. Revising paragraph (a)(1)(i);

■ b. Adding paragraph (a)(2);

■ c. Revising paragraphs (a)(3)(i)(D), (a)(3)(iii), and (a)(3)(v)(A);

■ d. Adding paragraphs (a)(4)(iii) and (b)(2);

■ e. Revising paragraphs (b)(3)(i)(C) and (b)(3)(iii)(A);

■ f. Adding paragraphs (b)(4)(iii) and (c)(3)(iii); and

■ g. Revising paragraph (c)(4).

The revisions and additions read as follows:

§ 32.39 Maryland.

* * * * *

(a) * * *

(1) * * *

(i) You must obtain, and possess while hunting, a refuge waterfowl hunting permit (printed and signed copy of permit from *Recreation.gov*).

* * * * *

(2) *Upland game hunting.* We allow incidental take of coyote during the prescribed State season while deer hunting on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(3)(i) through (v) apply.

(ii) Coyote may only be taken with firearms and archery equipment allowed during the respective deer seasons.

(iii) We prohibit the use of electronic predator calls.

(iv) We require the use of non-lead ammunition.

(3) * * *

(i) * * *

(D) We prohibit the use of rimfire or centerfire rifles and all handguns, except those that fire straight wall cartridges as defined by State law that are legal for deer hunting.

* * * * *

(iii) We allow turkey hunt permit holders (printed and signed copy of permit from *Recreation.gov*) to have an assistant, who must remain within sight and normal voice contact and abide by the rules set forth in the refuge's turkey hunting brochure.

* * * * *

(v) * * *

(A) We require disabled hunters to have an America the Beautiful Access pass (OMB Control 1024–0252) in their possession while hunting in disabled areas.

* * * * *

(4) * * *

(iii) We prohibit the use of lead fishing tackle while fishing in refuge waters.

(b) * * *

(2) *Upland game hunting.* We allow incidental take of coyote during the prescribed State season while deer hunting on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(3)(i) through (iii) apply.

(ii) Coyote may only be taken with firearms and archery equipment allowed during the respective deer seasons.

(iii) We prohibit the use of electronic predator calls.

(iv) We require the use of non-lead ammunition.

(3) * * *

(i) * * *

(C) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

* * * * *

(iii) * * *

(A) We require disabled hunters to have an America the Beautiful Access pass (OMB Control 1024–0252) in their possession while hunting in disabled areas.

* * * * *

(4) * * *

(iii) We prohibit the use of lead fishing tackle while fishing from designated shoreline areas on refuge.

(c) * * *

(3) * * *

(iii) We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any road that is traveled by vehicular traffic.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We prohibit the use or possession of lead fishing tackle.

* * * * *

■ 8. Amend § 32.45 by:

■ a. Revising paragraphs (b)(2) and (v)(1); and

■ b. Adding new paragraph (v)(3)(v).

The revisions and addition read as follows:

§ 32.45 Montana.

* * * * *

(b) * * *

(2) *Upland game hunting.* We allow the hunting of pheasant, sharp-tailed grouse, gray partridge, coyote, skunk, red fox, raccoon, hare, rabbit, and tree

squirrel on designated areas of the district.

* * * * *

(v) * * *

(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following condition: We allow the use of dogs while hunting migratory birds.

* * * * *

(3) * * *

(v) We prohibit hunting bear with dogs.

* * * * *

■ 9. Amend § 32.51 by:

■ a. Redesignating paragraphs (c) through (j) as (d) through (k);

■ b. Adding new paragraph (c); and

■ c. Revising newly redesignated paragraphs (d)(2)(i), (d)(3)(ii), (e)(1)(ii)(B) through (D), (e)(2)(i), (e)(2)(iv), (e)(3)(i), (e)(3)(iii), (h)(3) introductory text, (h)(3)(ii), (j)(2)(i), and (j)(3)(i).

The addition and revisions read as follows:

§ 32.51 New York.

* * * * *

(c) Great Thicket National Wildlife Refuge—(1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of wild turkey, white-tailed deer, and black bear on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunting permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunting permit at all times while scouting and hunting on the refuge.

(ii) We prohibit the use of dogs.

(iii) Hunters may access the refuge 2 hours before legal sunrise and must leave no later than 2 hours after legal sunset.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten deer into moving in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(v) We only allow archery hunting.

(4) [Reserved]

(d) * * *

(2) * * *

(i) The condition set forth at paragraph (d)(1)(i) of this section applies.

* * * * *

(3) * * *

(ii) The condition set forth at paragraph (d)(1)(i) of this section applies.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(B) We allow hunting only on Tuesdays, Thursdays, and Saturdays during the established refuge season set within the State western zone season, and during New York State's established special hunts, which can occur any day of the week as set by the State. Veteran and active military hunters may be accompanied by a qualified non-hunting companion (qualified companions must be of legal hunting age and possess a valid hunting license, Federal Migratory Bird Hunting and Conservation Stamp (as known as ''Federal Duck Stamp''), and Harvest Information Program (HIP) number).

(C) All hunters with reservations and their hunting companions must check-in at the Route 89 Hunter Check Station area at least 1 hour before legal shooting time or forfeit their reservation. Hunters may not enter the refuge/Hunter Check Station area earlier than 2 hours before legal sunrise.

(D) We allow motorless boats to hunt waterfowl. We limit hunters to one boat per reservation and one motor vehicle in the hunt area per reservation.

* * * * *

(2) * * *

(i) The condition set forth at paragraph (e)(1)(i) of this section applies.

* * * * *

(iv) We require the use of approved non-lead shot for upland game hunting (see § 32.2(k)).

(3) * * *

(i) The condition set forth at paragraph (e)(1)(i) of this section applies.

* * * * *

(iii) We allow white-tailed deer and turkey hunters to access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

* * * * *

(h) * * *

(3) *Big game hunting.* We allow hunting of black bear, wild turkey, and white-tailed deer on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) You may hunt black bear, wild turkey, and deer using archery equipment only.

* * * * *

(j) * * *

(2) * * *

(i) The conditions set forth at paragraphs (j)(1)(i) through (iii) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (j)(1)(i) and (ii), and (j)(2)(ii) of this section apply.

* * * * *

■ 10. Amend § 32.56 by revising paragraph (b)(1)(v) to read as follows:

§ 32.56 Oregon.

* * * * *

(b) * * *

(1) * * *

(v) We require youth waterfowl hunters to check in and out at the Hunter Check Station (refuge office), which is open from 1½ hours before legal hunting hours to 8 a.m. and from 11 a.m. to 1 p.m. We prohibit hunting after 12 p.m. (noon) for this hunt.

* * * * *

■ 11. Amend § 32.57 by revising paragraph (b) to read as follows:

§ 32.57 Pennsylvania.

* * * * *

(b) Erie National Wildlife Refuge—(1) *Migratory game bird hunting.* We allow hunting of mourning dove, woodcock, rail, Wilson's snipe, Canada goose, duck, coot, mute swan, and crow on designated areas of the refuge subject to the following conditions:

(i) We allow hunting and scouting activities on the refuge from September 1 through the end of February. We also allow scouting the 7 days prior to the start of each season.

(ii) We allow use of nonmotorized boats only for waterfowl hunting in permitted areas.

(iii) We prohibit field possession of migratory game birds in areas of the refuge closed to migratory game bird hunting.

(iv) We allow the use of dogs consistent with State regulations.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, coyote, skunk, weasel, porcupine, and opossum on designated areas of the refuge subject to the following conditions:

(i) We allow woodchuck hunting on the refuge from September 1 through the end of February.

(ii) We prohibit the use of raptors to take small game.

(iii) The condition set forth at paragraph (b)(1)(iv) of this section applies.

(iv) We prohibit night hunting. Hunters may access the refuge 2 hours before sunrise and must leave no later than 2 hours after sunset.

(3) *Big game hunting.* We allow hunting of deer, bear, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of feral hogs on the refuge from September 1 through the end of February.

(ii) The condition set forth at paragraph (b)(1)(iv) of this section applies.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow nonmotorized watercraft use in Area 5. Watercraft must remain in the area from the dike to 3,000 feet (900 meters) upstream.

(ii) We prohibit the taking of turtle or frog (see § 27.21 of this chapter).

(iii) We prohibit the collection or release of baitfish. Possession of live baitfish is prohibited on the Seneca Division.

(iv) We prohibit the taking or possession of shellfish on the refuge.

(v) We prohibit the use of lead fishing tackle on the refuge.

(vi) We allow fishing from ½ hour before sunrise until ½ hour after legal sunset.

* * * * *

■ 12. Amend § 32.58 by:

■ a. Revising paragraph (d)(3)(iii); and

■ b. Adding paragraphs (e)(2) and (3).

The revision and additions read as follows:

§ 32.58 Rhode Island.

* * * * *

(d) * * *

(3) * * *

(iii) We only allow portable or temporary stands and blinds that must be removed from the refuge on the last day of the refuge-authorized deer hunt (see § 27.93 of this chapter). We prohibit permanent tree stands. Stands and blinds must be marked with the hunter's State hunting license number.

* * * * *

(e) * * *

(2) *Upland game hunting.* We allow hunting of coyote and fox on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (e)(3)(i) applies.

(ii) We only allow the incidental take of coyote and fox during the refuge deer hunting season with weapons authorized for that hunt.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require every hunter to possess and carry a personally signed refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We only allow portable or temporary stands and blinds that must be removed from the refuge on the last day of the permitted hunting session (see § 27.93 of this chapter). We prohibit permanent tree stands. Stands and blinds must be marked with the hunter's State hunting license number.

(iii) We only allow the use of archery equipment.

* * * * *

■ 13. Amend § 32.59 by:

■ a. Revising paragraph (c)(3)(iii);

■ b. Removing paragraph (c)(3)(x); and

■ c. Redesignating paragraphs (c)(3)(xi) through (xiv) as (c)(3)(x) through (xiii).

The revision reads as follows:

§ 32.59 South Carolina.

* * * * *

(c) * * *

(3) * * *

(iii) Except for the special quota permit hunts, we allow only archery or muzzleloader hunting for deer. We only allow muzzleloading rifles using a single projectile on the muzzleloader hunts. We prohibit buckshot. During special quota permit hunts, we allow use of centerfire rifles or shotguns. We only allow shotguns for turkey hunts.

* * * * *

■ 14. Amend § 32.63 by revising paragraphs (b)(2) introductory text and (b)(2)(i) to read as follows:

§ 32.63 Utah.

* * * * *

(b) * * *

(2)*Upland game hunting.*We allow hunting of chukar, desertcottontail rabbit, and mountaincottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) We close to hunting on the last day of the State waterfowl season.

* * * * *

■ 15. Amend § 32.64 by adding paragraph (a)(1)(viii)(C) to read as follows:

§ 32.64 Vermont.

* * * * *

(a) * * *

(1) * * *

(viii) * * *

(C) We limit hunting to Saturdays, Sundays, and Wednesdays throughout the waterfowl hunting season for duck.

* * * * *

■ 16. Amend § 32.65 by:

■ a. Revising paragraphs (a)(4)(ii), (a)(4)(iii), (b), (c), and (f)(1)(ii);

■ b. Adding new paragraphs (f)(1)(vi) and (h)(1);

■ c. Revising paragraphs (h)(3)(ii), (h)(3)(iv), (j)(2), and (j)(3)(v);

■ d. Adding paragraph (m)(1);

■ e. Revising paragraph (m)(3);

■ f. Adding paragraphs (n)(1) and (2); and

■ g. Revising paragraph (n)(3).

The revisions and addition read as follows:

§ 32.65 Virginia.

* * * * *

(a) * * *

(4) * * *

(ii) You may surf fish, crab, and clam south of the refuge's beach access ramp. We allow night surf fishing by permit (FWS Form 3–2358) in this area on dates and at times designated on the permit.

(iii) For sport fishing in D Pool:

(A) We only allow fishing from the docks or banks in D Pool. We prohibit boats, canoes, and kayaks on D Pool.

(B) You must catch and release all freshwater game fish. The daily creel limit for D Pool for other species is a maximum combination of any 10 nongame fish.

(C) Parking for non-ambulatory anglers is available adjacent to the dock at D Pool. All other anglers must enter the area by foot or bicycle.

(b) Chincoteague National Wildlife Refuge—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, coot, snipe, gallinule, dove, woodcock, crow, and rail on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain and possess a signed refuge hunt brochure while hunting on the refuge.

(ii) Hunters may only access hunting areas by boat. We allow hunters to access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

(iii) We allow hunting during State seasons from September 16 to March 14.

(iv) We allow the use of dogs while hunting consistent with State regulations.

(v) We prohibit the use of permanent blinds and pit blinds. You must remove portable blinds and decoys at the end of each day's hunt.

(vi) We prohibit the possession or use of lead shot while hunting any migratory game species.

(2) *Upland game hunting.* We allow hunting of raccoon, opossum, fox, and coyote on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(i) of this section applies. All occupants of a vehicle or hunt party must possess a signed refuge hunt brochure and be actively engaged in hunting unless aiding a disabled person who possesses a valid State disabled hunting license.

(ii) Hunters must sign in at the hunter check station prior to hunting and sign out prior to exiting the refuge.

(iii) We prohibit the hunting of upland game at night. Hunters may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

(iv) We prohibit the use of dogs while hunting upland game.

(v) We prohibit firearms in designated archery-only areas.

(vi) You may not hunt, discharge a firearm, or nock an arrow or crossbow bolt within 100 feet (30.5 meters) of any building, road, or trail.

(vii) We prohibit the possession or use of lead ammunition while hunting upland game species.

(3) *Big game hunting.* We allow hunting of white-tailed deer, sika, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(2)(i), (ii), (v), and (vi) of this section apply.

(ii) Hunters may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) We prohibit the use of pursuit dogs while hunting white-tailed deer and sika.

(v) We allow the use of portable tree stands, but you must remove them at the end of each day's hunt.

(vi) We allow limited hunting of wild turkey during designated State spring and fall seasons only when in the possession of a valid refuge turkey quota hunt permit.

(vii) We prohibit the use or possession of lead ammunition while hunting wild turkey.

(4) *Sport fishing.* We allow sport fishing, crabbing, and clamming from the shoreline of the refuge in designated areas subject to the following conditions:

(i) You must attend minnow traps, crab traps, crab pots, and handlines at all times.

(ii) We prohibit the use of seine nets and pneumatic (compressed air or otherwise) bait launchers.

(iii) The State regulates certain species of finfish, shellfish, and crustacean (crab) using size or possession limits. You may not alter these species, to include cleaning or filleting, in such a way that we cannot determine its species or total length.

(iv) In order to fish after the refuge closes for the day, anglers must obtain an overnight fishing pass (name/address/phone) issued by the National Park Service. Anglers can obtain a pass in person at the National Park Service Tom's Cove Visitor Center.

(v) We allow the possession or use of only three surf fishing poles per licensed angler, and those poles must be attended at all times. This includes persons age 65 or older who are license-exempt in Virginia.

(c) Eastern Shore of Virginia National Wildlife Refuge—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, rail, snipe, gallinule, coot, woodcock, dove, and crow on designated areas of the refuge subject to the following conditions:

(i) We allow holders of a signed refuge hunt brochure (signed brochure) to access areas of the refuge typically closed to the non-hunting public. All occupants of a vehicle or hunt party must possess a signed brochure and be actively engaged in hunting. We allow an exception for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

(ii) Hunters may enter the refuge no earlier than 2 hours prior to legal sunrise and must exit the refuge no later than 2 hours after legal sunset.

(iii) We allow the use of dogs consistent with State and Northampton County regulations on designated areas of the refuge.

(iv) We allow hunting on the refuge only from September 1 until February 28. Hunting will follow State seasons during that period.

(v) You may not hunt, discharge a firearm, or nock an arrow or crossbow bolt outside of designated hunt areas or within 100 feet (30.5 meters) of a building, road or improved trail.

(vi) We prohibit the possession or use of lead ammunition while hunting.

(vii) We prohibit the use of permanent blinds and pit blinds. You must remove portable blinds and decoys at the end of each day's hunt.

(2) *Upland game hunting.* We allow hunting of rabbit, squirrel, quail, raccoon, opossum, fox, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) through (vi) of this section apply.

(ii) We prohibit the hunting of upland game at night.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), and (iv) through (vi) of this section apply.

(ii) We allow turkey hunting during the spring season only for a mentor-led hunt.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) We allow the use of portable tree stands. We require removal of the stands after each day's hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may access the refuge to fish from designated shore areas ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) Anglers may access State waters via the Wise Point Boat Ramp on the refuge from 5 a.m. to 10 p.m.

* * * * *

(f) * * *

(1) * * *

(ii) We allow holders of a signed refuge hunt brochure (signed brochure) to access areas of the refuge typically closed to the non-hunting public. All occupants of a vehicle, boat, or hunt party must possess a signed brochure and be actively engaged in hunting. We allow an exception for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

* * * * *

(vi) We prohibit the possession or use of lead ammunition while hunting.

* * * * *

(h) * * *

(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl hunting only during the mentor-led hunts.

(ii) We allow the use of retrieval dogs consistent with State regulations.

* * * * *

(3) * * *

(ii) We require spring turkey hunters to obtain a refuge hunting permit (FWS Form 3–2439) through a lottery administered by a designated third-party vendor.

* * * * *

(iv) We prohibit the possession or use of lead ammunition when hunting spring wild turkey.

* * * * *

(j) * * *

(2) *Upland game hunting.* We allow hunting of coyote and fox on designated areas of the refuge subject to the following conditions:

(i) We only allow the incidental take of coyote and fox during the refuge deer hunting season.

(ii) We require the use of non-lead ammunition when hunting coyote and fox.

(3) * * *

(v) We require the use of non-lead ammunition when hunting wild turkey.

* * * * *

(m) * * *

(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt waterfowl during designated days and times. The refuge provides dates for the waterfowl hunting season in the annual refuge hunt brochure.

(ii) In designated areas, we require hunters to possess and carry a refuge hunting permit (FWS Form 3–2439) obtained from a designated third-party vendor.

(iii) We allow the use of retrieval dogs consistent with State regulations.

* * * * *

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(ii) and (m)(2)(i) of this section apply.

(ii) We prohibit the possession or use of lead ammunition when hunting spring wild turkey.

(iii) Hunters may enter the refuge no earlier than 1 hour prior to the start of legal shooting time and must exit the refuge no later than 1 hour after the end of legal shooting time.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

* * * * *

(n) * * *

(1) *Migratory game bird hunting.* We allow hunting of waterfowl, rail, coot, snipe, gallinule, dove, woodcock, and crow on designated areas of the refuge subject to the following conditions:

(i) You must obtain and possess a signed refuge hunt brochure while hunting on the refuge.

(ii) You may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

(iii) We allow hunting during State seasons from September 16 to March 14.

(iv) We allow the use of dogs while hunting consistent with State regulations.

(v) We prohibit the use of permanent blinds and pit blinds. You must remove portable blinds and decoys at the end of each day's hunt (see § 27.93 of this chapter).

(vi) We prohibit the possession or use of lead shot while hunting any migratory game species.

(2) *Upland game hunting.* We allow hunting of raccoon, opossum, fox, coyote, rabbit, and squirrel on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth in paragraphs (n)(1)(i) and (iii) of this section apply.

(ii) We prohibit the hunting of upland game at night. You may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.

(iii) We prohibit the use of pursuit dogs while hunting upland game.

(iv) You may not hunt, discharge a firearm, or nock an arrow or crossbow bolt within 100 feet (30.5 meters) of any building, road, or trail.

(v) We prohibit the use or possession of lead ammunition while hunting upland game species.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (n)(1)(i) and (n)(2)(iv) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We prohibit the use of pursuit dogs while hunting white-tailed deer and wild turkey.

(iv) We allow the use of portable tree stands, but you must remove them at the end of each day's hunt (see § 27.93 of this chapter).

(v) We allow limited hunting of turkey during designated State spring and fall seasons only when in the possession of a valid refuge turkey quota hunt permit.

(vi) We prohibit the use or possession of lead ammunition for hunting wild turkey.

* * * * *

■ 17. Amend § 32.66 by revising paragraph (l)(3) to read as follows:

§ 32.66 Washington.

* * * * *

(l) * * *

(3) *Big game hunting.* We allow hunting of elk and turkey on designated areas of the refuge subject to the following conditions:

(i) Elk hunters must obtain a letter from the refuge manager assigning them a hunt unit.

(ii) Elk hunters may access the refuge no earlier than 2 hours before State legal shooting time and must leave no later than 5 hours after the end of State legal hunting hours.

(iii) Elk hunters not using approved nontoxic ammunition (see § 32.2(k)) must remove or bury the visceral remains of harvested animals.

(iv) We allow turkey hunting during the fall season only.

(v) We prohibit the possession or use of toxic shot by hunters using shotguns (see § 32.2(k)) when hunting turkey.

(vi) For turkey hunting, the condition set forth at paragraph (l)(1)(iv) of this section applies.

* * * * *

■ 18. Amend § 32.67 by revising paragraphs (a)(1)(v), (a)(2), and (a)(3) to read as follows:

§ 32.67 West Virginia.

* * * * *

(a) * * *

(1) * * *

(v) We allow dog training and scouting 7 days prior to legal hunting seasons.

(2) *Upland game hunting.* We allow the hunting of ruffed grouse, squirrel, cottontail rabbit, snowshoe hare, red fox, gray fox, bobcat, woodchuck, coyote, opossum, skunk, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (v) of this section apply.

(ii) You may hunt coyote, raccoon, and fox at night, but you must obtain a Special Use Permit (FWS Form 3–1383–G) at the refuge headquarters before hunting.

(iii) We allow hunting in Unit 2 with the following equipment: Rifle, archery (including crossbow), shotgun, or muzzleloader. If a rifle is used in Unit 2, it must be from an elevated stand. We prohibit stalking game with a rifle.

(iv) We prohibit the hunting of upland game species from March 1 through August 31.

(v) We allow the use of dogs for hunting of raccoon, cottontail rabbit, and snowshoe hare consistent with State regulations.

(3) *Big game hunting.* We allow the hunting of white-tailed deer, black bear, bobcat, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i), (ii), and (v) and (a)(2)(iii) of this section apply.

(ii) We allow the use of dogs for hunting black bear during the firearm season.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) Hunters are required to harvest an antlerless deer prior to harvesting a buck.

(v) You must label portable tree stands with your last name and State license number. You may erect your stand(s) on the first day of the hunting season. You must remove your stand(s) by the last day of the hunting season (see § 27.93 of this chapter).

* * * * *

■ 19. Amend § 32.68 by:

■ a. Revising paragraphs (a)(3), (b)(3)(i) through (iii), (b)(4), (d)(2)(ii), (d)(2)(viii), (d)(3)(i), and (d)(3)(iv);

■ b. Adding paragraph (d)(4)(iii);

■ c. Revising paragraphs (e)(1), (e)(3), and (e)(4);

■ d. Adding paragraphs (g)(1)(iii) through (v);

■ e. Revising paragraphs (g)(2)(i), (g)(3), (g)(4), (j)(1), and (j)(3); and

■ f. Adding paragraph (j)(4)(iii).

The revisions and additions read as follows:

§ 32.68 Wisconsin.

* * * * *

(a) * * *

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters may enter the refuge no earlier than 2 hours before legal shooting hours and must exit the refuge no later than 2 hours after legal shooting hours end.

(iii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange or fluorescent pink material visible from all directions.

* * * * *

(b) * * *

(3) * * *

(i) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters may enter the refuge no earlier than 2 hours before legal shooting hours and must exit the refuge no later than 2 hours after legal shooting hours end.

(iii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange or fluorescent pink material visible from all directions.

* * * * *

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing from the shoreline; we prohibit fishing from docks, piers, and other structures.

(ii) We prohibit the taking of any mussel (clam), crayfish, frog, leech, or turtle species by any method on the refuge (see § 27.21 of this chapter).

* * * * *

(d) * * *

(2) * * *

(ii) We prohibit night hunting of upland game from 30 minutes after legal sunset until 30 minutes before legal sunrise the following day.

* * * * *

(viii) Hunters may enter the refuge no earlier than 2 hours before legal shooting hours and must exit the refuge no later than 2 hours after legal shooting hours.

* * * * *

(3) * * *

(i) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

* * * * *

(iv) The condition set forth at paragraph (d)(2)(viii) applies.

* * * * *

(4) * * *

(iii) We prohibit the taking of any mussel (clam), crayfish, frog, leech, or turtle species by any method on the refuge (see § 27.21 of this chapter).

* * * * *

(e) * * *

(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except that we prohibit hunting on the Blue Wing Waterfowl Production Area (WPA) in Ozaukee County and on the Wilcox WPA in Waushara County, subject to the following conditions:

(i) We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

(ii) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

* * * * *

(3) *Big game hunting.* We allow hunting of big game throughout the district, except that we prohibit hunting on the Blue Wing WPA in Ozaukee County and on the Wilcox WPA in Waushara County, subject to the following conditions:

(i) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange or fluorescent pink material visible from all directions.

(ii) The condition set forth at paragraph (e)(1)(ii) of this section applies.

(4) *Sport fishing.* We allow sport fishing on WPAs throughout the district subject to the following conditions.

(i) We prohibit the use of motorized boats while fishing.

(ii) We prohibit the taking of any mussel (clam), crayfish, frog, leech, or turtle species by any method on the refuge (see § 27.21 of this chapter).

* * * * *

(g) * * *

(1) * * *

(iii) We prohibit the use of motorized boats while hunting and fishing.

(iv) During the State-approved hunting season, we allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

(v) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(2) * * *

(i) The conditions set forth at paragraphs (g)(1)(i) through (iv) of this section apply.

* * * * *

(3) *Big game hunting.* We allow hunting of big game on designated areas throughout the district subject to the following conditions:

(i) We prohibit hunting on designated portions of the St. Croix Prairie WPA and the Prairie Flats–South WPA in St. Croix County.

(ii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid-blaze-orange or fluorescent pink material visible from all directions.

(iii) The conditions set forth at paragraphs (g)(1)(iii) through (v) of this section apply.

(4) *Sport fishing.* We allow sport fishing on WPAs throughout the district subject to the following conditions.

(i) We prohibit the taking of any mussel (clam), crayfish, frog, leech, or turtle species by any method on the refuge (see § 27.21 of this chapter).

(ii) The condition set forth at paragraph (g)(1)(iii) of this section applies.

* * * * *

(j) * * *

(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) You must remove all boats, decoys, game cameras, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters may enter the refuge no earlier than 2 hours before legal shooting hours and must exit the refuge no later than 2 hours after legal shooting hours end.

(iii) We prohibit the use of motorized boats while hunting and fishing.

* * * * *

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow archery deer hunting to take place on refuge lands owned by the Service that constitute tracts greater than 20 acres (8 hectares).

(ii) The conditions set forth at paragraphs (j)(1)(i) and (ii) of this section apply.

(4) * * *

(iii) The condition set forth at paragraph (j)(1)(iii) applies.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–12463 Filed 6–8–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 87, No. 111

Thursday, June 9, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LP–22–0031]

Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's intention to request approval from the Office of Management and Budget for an extension of the currently approved information collection used to compile and generate cattle, swine, lamb, boxed beef, and wholesale pork Market News reports under the Livestock Mandatory Reporting Act of 1999.

DATES: Submit comments on or before August 8, 2022.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov/. Written comments may be submitted* to Russell Avalos, Assistant to the Director; Livestock, Poultry, and Grain Market News Division; Livestock and Poultry Program; Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 2619–S, STOP 0252; Washington, DC 20250–0252. All comments should reference the docket number (AMS–LP–22–0031), the date, and page number of this issue of the **Federal Register**. All comments will be posted without change, including any personal information provided, online at *https://www.regulations.gov/* and will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Russell Avalos, Assistant to the Director; Livestock, Poultry, and Grain Market News Division; (202) 738–2112: or by email *Russell.Avalos@usda.gov.*

SUPPLEMENTARY INFORMATION:

Agency: USDA, AMS.

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date of Approval: June 30, 2022.

Type of Request: Request for extension of a currently approved information collection.

Abstract: The Livestock Mandatory Reporting Act of 1999 (1999 Act) was enacted into law on October 22, 1999, [Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, Agricultural Marketing Service's (AMS); Livestock and Poultry Program (LP); Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the Livestock Mandatory Reporting (LMR) program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the U.S. Department of Agriculture (USDA); and encourage competition in the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) established the requirements for certain packers and importers to submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109–296] to re-establish regulatory authority for the continued operation of LMR through September 30, 2010, and separate the reporting requirements for sows and boars from barrows and gilts, among other changes. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111–239] to reauthorize LMR for an additional five years through September 30, 2015, and require the addition of wholesale pork through negotiated rulemaking. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

The Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114–54], enacted on September 30, 2015, reauthorized the LMR program for an additional five years through September 30, 2020, and amended certain lamb and swine reporting requirements.

For lamb, the definitions of a packer and importer were modified to lower the reporting thresholds of each, from a processing average of 75,000 lambs to 35,000 lambs, and from an import average of at least 2,500 metric tons of lamb meat products to an average of 1,000 metric tons of lamb meat. On May 31, 2016, a direct final rule to implement these reporting changes became effective (81 FR 10057, February 29, 2016). For swine, the 2015 Reauthorization Act added a definition and reporting requirements for negotiated formula and late day purchases. On October 11, 2016, a final rule became effective (81 FR 52969, August 11, 2016) to implement these changes as well as a lamb reporting change requested by industry stakeholders amending the term ''packer-owned lambs'' and requiring packers to report lambs owned by a packer for at least 28 days immediately before slaughter.

The reports generated by the 1999 Act are used by other Government agencies to evaluate market conditions and calculate price levels, including USDA's Economic Research Service and World Agricultural Outlook Board. Economists at most major agricultural colleges and universities use the reports to make short and long-term market projections. Also, the Government is a large purchaser of livestock related products, therefore a system to monitor the collection and reporting of data therefore was needed.

In order to comply with the 1999 Act's goal of encouraging competition in the marketplace for livestock and livestock products, Section 251 directs USDA to make available to the public information and statistics obtained from, or submitted by, respondents covered by the 1999 Act in a manner that ensures that the confidentiality of the reporting entities is preserved. AMS

is in the best position to provide this service.

Estimate of Burden: Public reporting burden for this collection is estimated to average 0.16 hours per response.

Respondents: Business or other for-profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 110 respondents.

Estimated Number of Responses: 144,664 responses.

Estimated Number of Responses per Respondent: 1,315 responses (*rounded*).

Estimated Total Annual Burden on Respondents: 23,035 hours (*rounded*).

Comments are invited on: (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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record, including any personal information provided.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–12389 Filed 6–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0010]

Elimination of Deadline for Partial Refunds of Overtime and Holiday Inspection Fees for Small and Very Small Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: On July 15, 2021, the Food Safety and Inspection Service (FSIS) announced in the **Federal Register** that, while funding is available, it will reduce overtime and holiday inspection fees for small and very small establishments. In the notice, FSIS stated that small and very small establishments need to submit an Overtime/Holiday Rate Reduction form to request an overtime or holiday inspection fee reduction. FSIS also explained that establishments that submit their forms by March 11, 2022, and that qualify for a fee reduction, would receive a partial refund for overtime and holiday inspection fees paid since October 11, 2020, *i.e.,* the first day of the pay period after the beginning of Fiscal Year 2021. FSIS is eliminating the March 11, 2022, deadline for partial refunds. Therefore, all establishments that qualify and submit their forms will be eligible to receive the partial refund for overtime and holiday fees paid since October 11, 2020, while funding is available.

ADDRESSES: Small and very small establishments should submit their completed forms to the FSIS inspection personnel assigned to their establishment or, alternatively, email the completed form to the appropriate FSIS District Office, ''Attention Grant Curator.'' Contact information for the FSIS District Offices, including email addresses, is available at: *https://www.fsis.usda.gov/contactus/fsis-offices/office-field-operations-ofo.*

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

For billing issues and to request refunds contact the Financial Service Center Customer Contact Center: (515) 334–2000 option 1 or email at *fsis.billing@usda.gov.*

SUPPLEMENTARY INFORMATION: In the American Rescue Plan Act of 2021 (Pub. L. 117–2, 135 Stat. 242), Congress provided FSIS with $100 million in budget authority to reduce the costs of overtime inspection for federally-inspected small and very small meat, poultry, and egg products establishments. Congress provided a period of availability up until fiscal year 2030, which ends September 30, 2030. On July 15, 2021, FSIS announced in the **Federal Register** that it implemented this provision by reducing overtime and holiday inspection fees for small establishments by 30 percent and very small establishments by 75 percent (86 FR 37276). FSIS also announced that it developed an Overtime/Holiday Rate Reduction form that official establishments must submit to request an overtime or holiday inspection fee reduction (86 FR 37276). The form is available on FSIS' website at: *https://www.fsis.usda.gov/sites/default/files/2021-07/FSIS-5200-16-OvertimeHolidayRateReductionForm_v6-4re508.pdf.*

While in the July 15 **Federal Register** notice (86 FR 37276), FSIS stated that establishments must submit their forms by March 11, 2022, to receive a partial refund back to October 11, 2020, the Agency has decided to eliminate the deadline for establishments to submit their forms to qualify for a partial refund for overtime and holiday inspection fees paid since October 11, 2020. Therefore, all establishments that qualify and submit their forms will be eligible to receive the partial refund for overtime and holiday fees paid since October 11, 2020, while funding is available.

Small and very small establishments should submit their completed forms to the FSIS inspection personnel assigned to their establishment or, alternatively, email the completed form to the appropriate FSIS District Office, ''Attention Grant Curator.''

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are

prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2022–12363 Filed 6–8–22; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia 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 Virginia Advisory Committee (Committee) will hold a web meeting via Zoom on Tuesday, June 28, 2022, at 12:00 p.m. Eastern Time. The purpose of the meeting is to discuss identified findings and recommendations from previous panels on police oversight and accountability in Virginia.

DATES: The meeting will be held on: Tuesday, June 28, 2022, at 12:00 p.m. Eastern Time.

Online Registration: *https://tinyurl.com/4ct334pp*

Join by Phone: 1–551–285–1373 US; Meeting ID: 160 701 5453

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number (audio only) or online registration link (audio/visual). 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. Individual who is 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 call number and conference ID number.

Members of the public are 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 Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

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, Virginia 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 & Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Testimony From Previous Panels
V. Next Steps
VI. Public Comments
VII. Adjournment

Dated: June 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–12434 Filed 6–8–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business 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 Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 9:00 a.m. ChST on Tuesday, June 21, 2022, (7:00 p.m. ET on Monday, June 20, 2022) to discuss civil rights concerns in the territory.

DATES: The meeting will take place on Tuesday, June 21, 2022, from 9:00 a.m.—10:30 a.m. ChST (Monday, June 20, 2022, from 7:00 p.m.—8:30 p.m. ET).

Link to Join (Audio/Visual):https://tinyurl.com/yj8sz88r.

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access Code: 2764 425 4150.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference 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 (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 *kfajota@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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

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, Guam 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 phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Potential Topic Choice
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: Friday, June 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–12437 Filed 6–8–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska 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 Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Thursday, June 23, 2022 at 12:00 p.m.–1:00 p.m. Central time. The purpose for the meeting is to discuss and brainstorm potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Thursday, June 23, 2022, from 12:00 p.m.–1:00 p.m. Central Time.

Online Regisration (Audio/Visual): https://civilrights.webex.com/civilrights/j.php?MTID=m633ae2a7fbd4943eeab4dd9d5e01f5e6. Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2763 910 3030.

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 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 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 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 *www.facadatabase.gov.* Persons interested in the work of this Committee are advised to go to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or email address.

Agenda

I. Welcome and Roll Call
II. Vice-Chair's Comments
III. Discuss Civil Rights Topics
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: June 6, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–12435 Filed 6–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2023 New York City Housing and Vacancy Survey (NYCHVS)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 15, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. To allow for sufficient coverage of units built in the prior two years (since the prior survey year sample was selected), the sample size was increased by 200, from 15,500 to 15,700. Although the sample increased, the respondent burden hours were decreased from 9,907 to 9,867 because not all vacant units will now be reinterviewed, something that was originally included in the respondent burden calculation.

Agency: U.S. Census Bureau, Commerce.

Title: 2023 New York City Housing and Vacancy Survey.

OMB Control Number: 0607–0757.

Form Number(s): N/A—Electronic forms.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 16,485.

Average Hours per Response: 0.6 (36 minutes).

Burden Hours: 9,891.

Needs and Uses: The Census Bureau will conduct the survey for the City of New York in order to determine the vacancy rate of rental housing stock, which the city uses to enact specific policies. New York City will also use the data to help measure the quality of its housing, and learn specific demographic characteristics about the city's residents.

Affected Public: Households and rental offices/realtors (for vacant units).

Frequency: approximately every three years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.—Section 8b, and the Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the

following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0757.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–12441 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; EDA Workforce Data Collection Instrument

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 29, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Commerce.

Title: EDA Workforce Data Collection Instrument.

OMB Control Number: New information collection.

Form Number(s): None.

Type of Request: Regular submission (new information collection).

Estimated Number of Respondents and Frequency: System Lead Entities/Backbone Organizations: 50 respondents, responding semiannually on their systems and corresponding characteristics, and responding quarterly with data collected from all training providers within the system, including information on participants trained by each training provider. As the Good Jobs Challenge is a new grant program, EDA anticipates that these estimates will be further refined based on data generated during the period of performance of Good Jobs Challenge grants.

Estimated Average Hours per Response: Semiannual data collection on the system and corresponding characteristics: 2 hours. Quarterly data collection on training providers and their training participants: 16.7 hours.

Estimated Burden Hours: 3,533 hours.

Type of metric (all information to be provided by system lead respondents)	Number of responses	Hours per response	Number of responses per year	Total estimated time
System Information	*50	2 hours	2 (Semiannually)	200 hours.
Training Provider and Training Participant Information.	*50	16.7 hours (4 training providers serving 50 participants each* × 5 minutes per participant).	4 (Quarterly)	3,333 hours.
Total				3,533 hours.

*The number of responses should be considered estimates given the Good Jobs Challenge intended impact. Given investment alignment and program priorities are founded on equity, there could be lower number of stakeholders participating given their efforts to work with individuals most underserved.

Needs and Uses: To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. Under the EDA American Rescue Plan (ARP) Act Good Jobs Challenge, award recipients will be required to submit identified program metrics and information to ensure that EDA workforce investments are evidence-based and data-driven, and accountable to participants and the public. EDA will require information on three key award stakeholders: (1) System Lead Entity/Backbone Organization, defined as the lead entity of a regional workforce training system or sectoral partnership; (2) Training Providers, defined as entities providing relevant training and learning in a regional workforce training system; and (3) Participants, defined as individuals directly trained and placed into jobs via a regional workforce training system. System Lead Entities/Backbone Organizations will also coordinate with relevant employers to understand program performance from the employers' perspective. All process, output, and outcome metrics are associated with the following objectives:

- System Lead Entity/Backbone Organizations: (1) Establish, strengthen, or expand sectoral partnerships or regional workforce training systems; (2) Target underserved populations and areas to participate in the skills training program to reduce systemic inequities and barriers to employment and enhance diversity, equity, and inclusion in industry, including by securing and offering wrap-around services; (3) Support employers in filling demand for good-paying jobs, and (4) Leverage federal and non-federal funds to expand reach and support sustainability.
- Training Providers: Provide skills training to unemployed, underemployed, or incumbent workers with opportunity for increased wages through targeted upskilling to place them into quality jobs and provide employers with skilled workers.
- Participants: Position for employment and wage growth.

EDA will require all ARP Act Good Jobs Challenge award recipients to submit data on the system on a semiannual basis and data on Training Providers and Participants within the system on a quarterly basis.

Affected Public: Recipients of ARP Act Good Jobs Challenge awards, which may include a(n): District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a state or local government engaged in economic or infrastructure development activities or a consortium of political subdivisions; Institution of Higher Education or a consortium of institutions of higher education; or

Public or private non-profit organization or association, including labor unions, acting in cooperation with officials of a political subdivision of a State. Additionally, training providers and participants in regional workforce training systems will be affected.

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–12471 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; BIS Program Evaluation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 8, 2022.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*). Please reference OMB Control Number 0694–0125 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Industry and Security (BIS) conducts seminars on various aspects of the export controls under BIS' jurisdiction. Feedback from these seminars are vital to ensuring the quality and relevance of outreach programs. Participants' completion of a voluntary survey provides BIS with immediate feedback on various program elements allowing BIS to improve and adjust its course offerings to meet the needs of the exporting community. BIS typically conducts over 30 seminars each year, at locations across the United States and overseas.

II. Method of Collection

Paper and Electronic.

III. Data

OMB Control Number: 0694–0125.

Form Number(s): BIS 0694–0125.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Government Performance and Results Act (GPRA).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–12455 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2021, Commerce published the notice of initiation of this administrative review.[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2]

Scope of the Order [3]

The products covered by the *Order* are narrow woven ribbons with woven selvedge from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. We received a timely withdrawal of the request for review for Changtai Rongshu Textile Co., Ltd. (Changtai Rongshu) and Yangzhou Bestpak Gifts and Crafts Co., Ltd. (Yangzhou Bestpak) from Berwick Offray LLC and its wholly-owned subsidiary, Lion Ribbon Company LLC (collectively, the petitioner) and no other party requested a review of these companies.[4] Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review of the *Order* with respect to Changtai Rongshu and Yangzhou Bestpak.

In addition, pursuant to 19 CFR 351.213(d)(3), Commerce's practice is to rescind an administrative review of a countervailing duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[5] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[6] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[7]

According to the CBP data, 113 of the companies subject to this review for which the request for review was not withdrawn did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Therefore, we notified all interested parties of our intent to rescind this review with respect to these companies and provide parties an opportunity to submit comments, including factual information to demonstrate whether there were reviewable entries during the POR for these companies.[9] No interested party filed comments regarding our intent to rescind this review for these companies. Accordingly, in accordance with 19 CFR 351.213(d)(3), in the absence of reviewable, suspended entries of subject merchandise during the POR by these 113 companies, Commerce is also rescinding this administrative review with respect to these companies.[10]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). In reaching these preliminary results, Commerce relied on facts otherwise available, with the application of adverse inferences.[11] For further information, *see* ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Preliminary Decision Memorandum.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is provided as Appendix I to this notice. 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 *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Rate for Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address what rate to apply to respondents which are not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 705(c)(5)(A)(i) of the Act states that the all-others rate should be calculated by averaging the weighted-average countervailable subsidy rates for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Section 705(c)(5)(A)(ii) of the Act provides that where all rates are zero, *de minimis,* or based entirely on facts available, Commerce may use ''any reasonable method'' for assigning a rate to non-examined respondents.

In this review, we have preliminarily determined a rate based entirely on facts available for the sole mandatory respondent, Yama Ribbons and Bows Co., Ltd. In countervailing duty proceedings, where the number of respondents individually examined has been limited, Commerce has determined that a ''reasonable method'' to determine the rate applicable to companies not individually examined when all the rates of selected mandatory respondents are zero, *de minimis,* or based entirely on facts available, is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available. In the most recently completed administrative review of the *Order,* we calculated a countervailable subsidy rate of 42.20 percent for Yama

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 28, 2021).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020 Administrative Review of the Countervailing Duty Order on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China; and Rescission, in Part,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Countervailing Duty Order,* 75 FR 53642 (September 1, 2010) (*Order*).

[4] *See* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated February 3, 2022.

[5] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[6] *See* 19 CFR 351.212(b)(2).

[7] *See* 19 CFR 351.213(d)(3).

[8] *See* Appendix II.

[9] *See* Memorandum, ''Notice of Intent to Rescind Review, in Part,'' dated March 14, 2022.

[10] *See* Appendix II.

[11] *See* section 776 of the Act.

Ribbons and Bows Co., Ltd., the sole mandatory respondent, that was not based entirely on facts available.[12] Thus, consistent with Commerce's past practice, we preliminarily assigned to the non-individually examined respondents the rate calculated for Yama in the 2018 administrative review (*i.e.,* 42.20 percent).

Preliminary Results of Review

We preliminarily determine the following net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020:

Producers/exporters	Net countervailable subsidy rate (percent)
Stribbons (Guangzhou) Ltd. aka MNC Stribbons	42.20
Xiamen Lude Ribbons And Bows Co., Ltd	42.20
Yama Ribbons and Bows Co., Ltd	176.95

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of these preliminary results of review in the **Federal Register**.[13] Rebuttal comments, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for filing case briefs.[14] Parties who submit case or rebuttal briefs in this administrative review 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.[15] Case and rebuttal briefs must be filed using ACCESS.[16] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must do so within 30 days after the publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.[18]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results of this administrative review.

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the companies for which we have rescinded this administrative review, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2020, through December 31, 2020, in accordance with 19 CFR 351.212I(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: June 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Partial Rescission of Administrative Review
IV. Scope of the *Order*
V. Use of Facts Otherwise Available and Application of Adverse Inferences
VI. Rate for Non-Selected Companies
VII. Recommendation

Appendix II—Companies Without POR Entries

1. Amadeus Textile Ltd.
2. Amsun Industrial Co., Ltd.
3. Beauty Horn Investment Limited
4. Bestpak Gifts and Crafts Co., Ltd.
5. Billion Trend International Ltd.
6. Changle Huanyu Ribbon Weaving Co., Ltd.

[12] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2018,* 86 FR 40462 (July 28, 2021).

[13] *See* 19 CFR 351.309(c).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[16] *See* 19 CFR 351.303.

[17] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); and *Temporary Rule Modifying* AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period, 85 FR 41363 (July 10, 2020).

[18] *See* 19 CFR 351.310.

7. Changle Ruixiang Webbing Co., Ltd.
8. Cheng Xeng Label Mfg. Co.
9. Complacent Industrial Co. Ltd. (HK)
10. Creative Design Ltd.
11. Dongguan Qaotou Sheng Feng Decoration Factory
12. Dongguan Yi Sheng Decoration Co., Ltd.
13. Dragon Max Weaving & Accessories Company
14. East Sun Gift & Crafts Factory
15. Fasheen Accessories Co. Ltd.
16. Fly Dragon (Guang zhou) Imports & Exports trading co., Ltd
17. Fuhua Industrial Co., Ltd
18. Fujian Rongshu Industry Co., Ltd.
19. Fujian Shi Lian Da Garment Accessories Co., Ltd.
20. Fujian Xin Shen Da Weaving Ribbons Co., Ltd.
21. Fujian Xinshengda Weaving Ribbons Co., Ltd.
22. Fung Ming Ribbon Ind Ltd
23. Goodyear Webbing Products Co., Ltd.
24. Gordon Ribbons & Trimmings Co., Ltd.
25. Guangzhou Complacent Weaving Co Ltd
26. Guangzhou Leiyu Trade Co., Ltd.
27. Guangzhou Liman Ribbon Factory
28. Guangzhou Mafolen Ribbons & Bows Ltd
29. Guangzhou String Textile Accessories Co., Ltd.
30. Hubscher Ribbon Corp., Ltd. (d/b/a Hubschercorp)
31. Huian Huida Webbing Co., Ltd.
32. Huzhou Linghu Tianyi Tape Co., Ltd.
33. Huzhou Unifull Label Fabric Co., Ltd.
34. Jian Chang Ind. Co., Ltd.
35. Jiangyin Lilai Tape Co., Ltd.
36. Jufeng Ribbon Co. Ltd.
37. Kaiping Qifan Weaving Co., Ltd.
38. King's Pipe Cleaner's Ind. Inc aka King's Crafts (China) Ltd (aka King's Pipe Cleaner's, Ind. Inc)
39. Kinstarlace & Embroidery Co.
40. Kunshan Dah Mei Weaving Co. Ltd.
41. Lace Fashions Industrial Co. Ltd.
42. Linghu Jiacheng Silk Ribbon Co., Ltd.
43. Ningbo Bofa Co., Ltd
44. Ningbo Flowering Crafts Co., Ltd.
45. Ningbo Hongshine Decorative Packing Industrial Co. Ltd. aka Ningbo Hongrun Craft and Ornament Factory
46. Ningbo Jinfeng Thread & Ribbon Co. Ltd.
47. Ningbo MH Industry Co., Ltd.
48. Ningbo R&D Ind Company
49. Ningbo Sunshine Import & Export Co. Ltd
50. Ningbo V.K. Industry and Trading Co., Ltd.
51. Ningbo Wanhe Industry Co., Ltd.
52. Ningbo XWZ Ribbon Manufactory
53. Ningbo Yinzhou Hengcheng Ribbon Factory
54. Ningbo Yinzhou Jinfeng Knitting Factory
55. PROTEX Co., ltd
56. Qingdao Cuifengyuan Industrial and Trading Co., Ltd.
57. Qingdao Haili Lace & Ribbon Co., Ltd.
58. Qingdao Hileaders Co., Ltd.
59. RizeStar Weaving Ribbon Factory
60. Shandong Hileaders Industrial Co., Ltd.
61. Shanghai Dae Textile International Co., Ltd.
62. Shanghai E & T Jawa Import & Export Co. Ltd.
63. ShaoXing Haiyue Gifts Co. Ltd.
64. Shenq Sin Company Ltd.
65. Shenzhen Bostrip Crafts Co. Ltd.
66. Shenzhen Candour Belt & Tape Co., Ltd.
67. Shenzhen Jinpin Gifts & Crafts Factory
68. Shenzhen Lucky Star Craft Co., Ltd.
69. Shenzhen Weiyi Crafts Technology Co., Ltd.
70. Shenzhen Yibao Gifts Co. Ltd.
71. Shishi Lifa Computer Woven Label Co., Ltd.
72. Shuanglin Label
73. Sinopak Gifts & Crafts Co., Ltd
74. Stribbons (Nanyang) MNC Ltd.
75. String Textile Accessories Co., Ltd.
76. Success Charter Enterprise Limited
77. Sun Rich (Asia) Limited
78. Sungai Garment Accessories Co., Ltd.
79. Tianjin Sun Ribbon Company Ltd aka Tian Jin Sun Ribbon Company Ltd.
80. Weifang Aofulon Weaving Company Ltd.
81. Weifang Chenrui Textile Co., Ltd.
82. Weifang Dongfang Ribbon Weaving Co. Ltd.
83. Weifang Jiacheng Webbing Co., Ltd.
84. Weifang Jinqi Textile Co., Ltd.
85. Weifang Yuyuan Textile Co. Ltd.
86. Wenzhou GED Industrial Co. Ltd.
87. Wiefang Shicheng Ribbon Factory
88. Wing Tat Haberdashery Co. Ltd aka Wing Hiang Belt Weaving Ltd.
89. Xiamen Bailuu Thread Manufacture Co., Ltd.
90. Xiamen Bethel Ribbon & Trims Co., Ltd.
91. Xiamen Boca Ribbons & Crafts Co., Ltd.
92. Xiamen Egret Thread Manufacturing Co., Ltd.
93. Xiamen Especial Industrial Co., Ltd.
94. Xiamen Lianglian Ribbons & Bows Co., Ltd
95. Xiamen Linji Ribbons & Bows Co., Ltd.
96. Xiamen Midi Ribbons & Crafts Co., Ltd.
97. Xiamen Rainbow Gifts & Packs Co., Ltd.
98. Xiamen Sanling Ribbon Packing Co., Ltd.
99. Xiamen ShangPeng Weaving Ribbon Factory
100. Xiamen Sling Ribbon & Bows Co., Ltd.
101. Xiamen Yi He Textile Co., Ltd. (d/b/a Roungshu Ribbon)
102. Yi Jia Trimmings Accessories & Supplies/Dong Guan WSJ Weaving Factory Limited
103. Yiwu Baijin Belt Co., Ltd.
104. Yiwu City Pingzhan Weaving Ribbon Factory
105. Yiwu Dong Ding Ribbons Co., Ltd.
106. Yiwu Ruitai Webbing Factory
107. Yiwu Yunli Tape Co., Ltd.
108. Yuanhong Garment Accessory Co., Ltd.
109. Yuyao Warp & Weft Tape Weaving Co., Ltd.
110. Zenith Garment Accessories Co., Ltd.
111. Zhejiang Chengxin Weaving Co., Ltd.
112. Zhejiang Sanding Weaving Co. Ltd.
113. Zibo All Webbing Co., Ltd.

[FR Doc. 2022–12427 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: 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) preliminarily determines that the 30 companies subject to this administrative review of the antidumping duty (AD) order on certain magnesia carbon bricks (bricks) from the People's Republic of China (China) are part of the China-wide entity because none filed a separate rate application (SRA) or a separate rate certification (SRC). The period of review (POR) is September 1, 2020, through August 31, 2021. We invite interested parties to comment on these preliminary results.

DATES: Applicable June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2021, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on bricks from China [1] for the POR.[2] On November 5, 2021, in response to a timely request from the Magnesia Carbon Bricks Fair Trade Committee (the petitioner),[3] we initiated an administrative review of the *Order* with respect to 30 companies.[4]

On November 15, 2021, we placed on the record U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO)

[1] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 49311 (September 2, 2021).

[3] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated September 29, 2021.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021) (*Initiation Notice*); *see also* the appendix to this notice.

for all interested parties having APO access.[5] The deadline for interested parties to submit a no-shipment certification, SRA, or SRC was December 6, 2021.[6] No party submitted a no-shipment certification, SRA, or SRC.

Scope of the Order

The scope of the *Order* includes certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).

Certain magnesia carbon bricks that are subject to the *Order* are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Preliminary Results of Review

The 30 companies subject to this review did not file no-shipment certifications, SRAs, or SRCs. Thus, Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rate status. As such, Commerce also preliminarily determines that the companies subject to review are part of the China-wide entity.

In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD administrative review.[7] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the China-wide entity and we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review, and the rate applicable to the NME entity is not subject to change as a result of this review. The China-wide entity rate is 236.00 percent.[8]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[9] ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[10] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[11] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[12]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[13] 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, parties will be notified of the time and date for the hearing to be held.[14] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, ADs on all appropriate entries covered by this review.[15] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 236.00 percent.[16]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese

[5] *See* Memorandum, ''U.S. Customs and Border Protection Data Query,'' dated November 15, 2021.

[6] *See Initiation Notice,* 86 FR at 61121 (''If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. . . . Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.''). Thirty calendar days after the *Initiation Notice* published was Sunday December 5, 2021. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Non-Market Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[8] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[11] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See Temporary Rule.*

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 310(d).

[15] *See* 19 CFR 351.212(b)(1).

[16] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 236.00 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These 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 ADs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of ADs occurred and the subsequent assessment of double ADs.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(4).

Dated: June 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

1. Autong Industry Co., Ltd.
2. Dandong Xinxing Carbon Co., Ltd.
3. Fedmet Resources Corporation
4. Fengchi Imp. and Exp. Co., Ltd.
5. Fengchi Imp. and Exp. Co., Ltd. of Haicheng City
6. Fengchi Mining Co., Ltd. of Haicheng City
7. Fengchi Refractories Co., of Haicheng City
8. FRC Global Inc.
9. Haicheng Donghe Taidi Refractory Co., Ltd.
10. Henan Xintuo Refractory Co., Ltd.
11. Liaoning Fucheng Refractories
12. Liaoning Zhongmei High Temperature Material Co., Ltd.
13. Liaoning Zhongmei Holding Co., Ltd.
14. PRCO America Inc.
15. Puyang Refractories Co., Ltd.
16. Puyang Refractories Group Co., Ltd.
17. Qingdao Wonjin Special Refractory Material Co., Ltd.
18. RHI Refractories Liaoning Co., Ltd.
19. Shenglong Refractories Co., Ltd.
20. SL Refractories LLC
21. Tangshan Strong Refractories Co., Ltd.
22. The Economic Trading Group Of Haicheng Houying Corp. Ltd.
23. Wonjin Refractory Co., Ltd.
24. Yingkou Heping Samwha Minerals, Co., Ltd.
25. Yingkou Heping Sanhua Materials Co., Ltd.
26. Yingkou Hongyu Wonjin Refractory Material Co., Ltd.
27. Yingkou Mei'ao Mining Product Co., Ltd.
28. Zibo Fubang Wonjin Refractory Technology Co., Ltd.
29. Zibo Hengsen Refractory Co., Ltd.
30. Zibo Hitech Material Co., Ltd.

[FR Doc. 2022–12429 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Preliminary Results of Changed Circumstances Review: Antidumping Duty Order on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Honda Power Products (China) Co., Ltd. (Honda) is the successor-in-interest to Jialing-Honda Motors Co., Ltd. (Jialing) and, accordingly, that subject merchandise produced and exported by Honda should be assigned the cash deposit rate established for subject merchandise produced and exported by Jialing for purposes of the antidumping duty (AD) order on certain vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China).

DATES: Applicable June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Leo Ayala AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 2022, Commerce published the initiation of a changed circumstances review (CCR) of the AD order [1] on vertical shaft engines from China.[2] Commerce declined to combine the *Initiation Notice* with the preliminary results of the CCR,[3] citing the need to issue an additional supplemental questionnaire to Honda regarding Honda's customer base and supplier relationships. On February 15, 2022, we issued a supplemental questionnaire to Honda requesting this information.[4] On March 8, 2022, Honda timely responded to this supplemental questionnaire.[5] No other interested party submitted comments or factual information regarding Honda's request.

Scope of the Order

The products covered by the *Order* are large vertical shaft engines from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[6]

Legal Framework

In determining whether one company is the successor-in-interest to another company as part of an AD proceeding, Commerce examines several factors including, but not limited to: (1) management and ownership; (2) production facilities; (3) supplier relationships; and (4) customer base.[7] Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be the successor-in-interest if its resulting operation is not materially dissimilar to that of its

[1] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 12623 (March 4, 2021) (*Amended Final Determination* and *Order*); *see also Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Notice of Correction to the Amended Final Antidumping Duty Determination and Antidumping Duty Order*, 86 FR 13694 (March 10, 2021).

[2] *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China,* 86 FR 9573 (February 22, 2022) (*Initiation Notice*).

[3] *See* 19 CFR 351.221(c)(3)(ii).

[4] *See* Commerce's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Changed Circumstances Review; Second Supplemental Questionnaire,'' dated February 15, 2022.

[5] *See* Honda's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Changed Circumstances Review; Second Supplemental Questionnaire,'' dated March 8, 2022.

[6] *See* Memorandum, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Preliminary Results of the Changed Circumstances Review; Preliminary Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See, e.g., Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

predecessor.[8] Thus, if the ''totality of circumstances'' demonstrate that, with respect to the production and sale of the subject merchandise, the new company operates as essentially the same business entity as the prior company, Commerce will assign the successor-in-interest the cash deposit rate of its predecessor.[9]

Preliminary Results of Review

We preliminarily determine that Honda is the successor-in-interest to Jialing for purposes of the *Order.* Record evidence submitted by Honda indicates that, based on the totality of the circumstances under Commerce's successor-in-interest criteria, Honda operates as materially the same business entity as Jialing with respect to the production and sale of subject merchandise. In particular, we preliminarily find that Honda's management and ownership, production facilities, supplier relationships, and customer base with regard to the subject merchandise are substantially the same as Jialing's before the name change. For the complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum.

Therefore, based on record evidence, we preliminarily determine that Honda is the successor-in-interest to Jialing and the cash deposit rate assigned to Jialing should be the rate for Honda as a result of our successor-in-interest finding. Should our final results of review remain the same as these preliminary results of review, Honda will be assigned the cash deposit rate currently assigned to Jialing with respect to the subject merchandise (*i.e.,* 261.93 percent).[10] We will thus instruct U.S. Customs and Border Protection to suspend liquidation of entries of vertical shaft engines from China produced and exported by Honda, effective on the publication date of the final results, at the cash deposit rate for estimated antidumping duties assigned to Jialing.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the due date for case briefs, in accordance with 19 CFR 351.309(d).[11] Parties who submit case or rebuttal briefs 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.[12]

All comments are to be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must be served on interested parties.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the 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 the date and the time of the hearing two days before the scheduled date.

Final Results of Review

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to the outcome of the review.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–12425 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[9] *See, e.g., id.;* and *Brass Sheet and Strip from Canada: Final Results of Administrative Review,* 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

[10] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 12623 (March 4, 2021).

[11] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

[12] *See* 19 CFR 351.30(c)(2) and (d)(2).

[13] *See generally* 19 CFR 351.303.

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–826]

White Grape Juice Concentrate From Argentina: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2022, the U.S. Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of white grape juice concentrate from Argentina.[1] Currently, the preliminary determination is due no later than June 24, 2022.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR

[1] *See White Grape Juice Concentrate from the Republic of Argentina: Initiation of Countervailing Duty Investigation,* 87 FR 24945 (April 27, 2022).

[2] The petitioner is Delano Growers Grape Products, LLC.

351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 31, 2022, the petitioner submitted a timely request that Commerce postpone the preliminary determination.[3] The petitioner stated that postponement ''is warranted to permit Commerce to develop the record in this investigation,'' and that ''{a}dditional time will be necessary to ensure that {Commerce} is able to sufficiently review all questionnaire responses, issue supplemental questionnaires as appropriate, and prepare an accurate preliminary determination.''[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* August 29, 2022.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–12431 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Petitioner's Letter, ''Petition for the Imposition of Countervailing Duty: White Grape Juice Concentrate from Argentina; Petitioner's Request for Postponement of Preliminary Determinations,'' dated May 31, 2022.

[4] *Id.*

[5] Postponing the preliminary 130 days after initiation would place the deadline on Sunday, August 28, 2022. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on June 29, 2022, from 10:00 a.m. to 5:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration at Email: *richard.boll@trade.gov,* phone 571–331–0098.

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. app.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters to Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional, and Business Services will post the final detailed agenda on its website, *https://www.trade.gov/acscc.* The transcript of the meeting will also be posted on the Committee website.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard Boll, at *richard.boll@trade.gov,* for participation information.

Dated: June 6, 2022.

Heather Sykes,

Acting Executive Director for Services.

[FR Doc. 2022–12468 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with April anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with April anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures;*

Continued

subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than April 30, 2023.

	Period to be reviewed
AD Proceedings	
ARGENTINA: Biodiesel, A–357–820	4/1/21–3/21/22
Aceitera General Deheza S.A.	
Bio Nogoya S.A.	
Bunge Argentina S.A.	
Cargill S.A.C.I.	
COFCO Argentina S.A.	
Cámara Argentina de Biocombustibles	
Explora	
GEFCO Argentina	
LDC Argentina S.A.	
Molinos Agro S.A.	
Noble Argentina	
Oleaginosa Moreno Hermanos S.A.	
Patagonia Bioenergia	
Renova S.A.	
T6 Industrial SA (EcoFuel)	
Unitec Bio S.A.	
Vicentin S.A.I.C.	
Viluco S.A.	
CROATIA: Alloy Aluminum Sheet, A–891–001	10/15/20–3/31/22
Impol d.o.o.	
Impol-TLM, d. o. o.	
INDIA: Carbon and Alloy Steel Threaded Rod, A–533–887	4/1/21–3/31/22
Aadi Shree Fastener Industries	
Aanjaney Micro Engy Pvt., Ltd.	
Accurate Steel Forgings (I) Ltd.	
A H Enterprises	
Alps Industries Ltd.	
Apex Thermocon Pvt., Ltd.	
Ash Hammer Union	
Astrotech Steels Pvt., Ltd.	
Atlantic Container Line Pvt., Ltd.	
Ats Exp. 07	
Atz Shipping Trade & Transport Pvt.	
BA Metal Processing	
Babu Exports	
Bee Dee Cycle Industries	
Bhansali Inc	
Boston Exp. & Engineering Co.	
C.H.Robinson International (India)	
C.P.World Lines Pvt., Ltd.	
Century Distribution Systems Inc.	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Charu Enterprises	
Chirag International	
Daksh Fasteners	
Dedicated Imp. & Exp. Co.	
Dhiraj Alloy & Stainless Steel	
Dsv Air And Sea Pvt., Ltd.	
Eastman Industries Ltd.	
Eos Precision	
ESL Steel Ltd.	
Everest Exp.	
Everest Industrial Corporation	
Farmparts Company	
Fence Fixings	
Fine Thread Form Industries	
Galorekart Marketplace Pvt., Ltd.	
Ganga Acrowools Ltd.	
Ganpati Fastners Pvt., Ltd.	
Gateway Engineering Solution	
GDPA Fasteners	
Gee Pee Overseas	
Geodis India Pvt., Ltd. (Indel)	
Goodgood Manufacturers	
Idea Fasteners Pvt., Ltd.	
Jindal Steel And Power Ltd.	
JSW Steel Ltd	
Kanchan Trading Co	
Kanhaiya Lal Tandoor (P) Ltd.	
Kanika Exp.	
Kapson India	
Kapurthala Industrial Corporation	
Karna International	
Kei Industries Ltd.	
King Exports	
Kintetsu World Express In	
Kova Fasteners Pvt., Ltd.	
Linit Exp. Pvt., Ltd.	
Mahajan Brothers	
Maharaja International	
Mangal Steel Enterprises Ltd.	
Maya Enterprises	
Meenakshi India, Ltd.	
Metalink	
MKA Engineers And Exporters Pvt., Ltd.	
National Cutting Tools	
Nishant Steel Industries	
NJ Sourcing	
Noahs Ark International Exp.	
Nuovo Fastenings Pvt., Ltd.	
Oia Global India Pvt., Ltd.	
Otsusa India Pvt., Ltd.	
Paloma Turning Co. Pvt., Ltd.	
Patton International Ltd.	
Perfect Tools & Forgings	
Permali Wallace Pvt., Ltd.	
Polycab India Ltd.	
Pommada Hindustan Pvt., Ltd.	
Poona Forge Pvt., Ltd.	
Psl Pipe & Fittings Co.	
R A Exp.	
R K Fasteners (India)	
Raajratna Ventures Ltd.	
Raashika Industries Pvt., Ltd.	
Rajpan Group	
Rambal Ltd.	
Randack Fasteners India Pvt., Ltd.	
Ratnveer Metals Ltd.	
Rimjhim Ispat Ltd.	
Rods & Fixing Fasteners	
S K Overseas	
S.M Forgings & Engineering	
Sandip Brass Industries	
Sandiya Exp. Pvt., Ltd.	
Sansera Engineering Pvt., Ltd.	
Shree Luxmi Fasteners	

	Period to be reviewed
Silverline Metal Engineering Pvt. Lt	
Singhania International Ltd.	
Sri Satya Sai Enterprises	
Steampulse Global Llp	
Steel Authority Of India Ltd.	
Suchi Fasteners Pvt., Ltd.	
Supercon Metals Pvt., Ltd.	
Tekstar Pvt., Ltd.	
The Technocrats Co.	
Tijiya Exp. Pvt., Ltd.	
Tijiya Steel Pvt., Ltd.	
Tong Heer Fasteners	
Trans Tool Pvt., Ltd.	
Universal Engineering And Fabricat	
Vidushi Wires Pvt., Ltd.	
Vrl Automation	
VV Marine Pvt., Ltd.	
Yogendra International	
Zenith Steel Pipes And Industries L	
Zenith Precision Pvt., Ltd.	
INDIA: Common Alloy Aluminum Sheet, A–533–895	10/15/20–3/31/22
Hindalco Industries Limited	
Virgo Aluminum Limited	
INDONESIA: Biodiesel, A–560–830	4/1/21–3/31/22
PT Cermerlang Energi Perkasa (CEP)	
PT Ciliandra Perkasa	
PT. Musim Mas, Medan	
PT Pelita Agung Agrindustri	
Wilmar International Ltd.	
SLOVENIA: Alloy Aluminum Sheet, A–856–001	10/15/20–3/31/22
Impol d.o.o.	
Impol FT, d. o. o.	
Impol Servis	
Impol 2000	
SPAIN: Common Alloy Aluminum Sheet, A–469–820	10/15/20–3/31/22
Compania Valenciana de Aluminio Baux, S.L.U./Bancolor Baux, S.L.U.	
THE PEOPLE'S REPUBLIC OF CHINA: 1,2,1,2-Tetrafluorethane (R–134a), A–570–044	4/1/21–3/31/22
Electrochemical Factory of Zhejiang Juhua Co., Ltd.	
Fujian Qingliu Dongying Chemical Ind. Co., Ltd.	
Hongkong Richmax Ltd.	
Huantai Dongyue International Trade Co. Ltd.	
Jiangsu Bluestar Green Technology Co., Ltd.	
Jiangsu Sanmei Chemicals Co., Ltd.	
Jinhua Binglong Chemical Technology Co., Ltd.	
Jinhua Yonghe Fluorochemical Co., Ltd.	
Puremann, Inc.	
Shandong Dongyue Chemical Co., Ltd.	
Shandong Huaan New Material Co., Ltd.	
Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.	
T.T. International Co., Ltd.	
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (aka Weichang Refrigeration Equipment (Kunshan) Co., Ltd.)	
Zhejiang Juhua Co., Ltd.	
Zhejiang Morita New Materials Co., Ltd.	
Zhejiang Organic Fluor-Chemistry Plant, Zhejiang Juhua Co., Ltd.	
Zhejiang Quhua Fluor-Chemistry Co., Ltd.	
Zhejiang Quhua Juxin Fluorochemical Industry Co., Ltd.	
Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.	
Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.	
Zhejiang Sanmei Chemical Ind. Co., Ltd.	
Zhejiang Yonghe Refrigerant Co., Ltd.	
Zhejiang Zhonglan Refrigeration Technology Co., Ltd.	
Zibo Feiyuan Chemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Activated Carbon, A–570–904	4/1/21–3/31/22
Beijing Pacific Activated Carbon Products Co., Ltd.	
Bengbu Modern Environmental Co. Ltd.	
Carbon Activated Tianjin Co., Ltd.	
Datong Juqiang Activated Carbon Co., Ltd.	
Datong Municipal Yunguang Activated Carbon Co., Ltd.	
Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., Jacobi Carbons Industry (Tianjin) Co. Ltd., and Jacobi Adsorbent Materials [5]	
Jilin Bright Future Chemicals Co., Ltd.	
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	
Ningxia Huahui Environmental Technology Co., Ltd. (formerly known as Ningxia Huahui Activated Carbon Co., Ltd.) [6]	

	Period to be reviewed
Ningxia Mineral & Chemical Limited	
Shanxi Dapu International Trade Co., Ltd.	
Shanxi DMD Corp.	
Shanxi Industry Technology Trading Co., Ltd.	
Shanxi Sincere Industrial Co., Ltd.	
Shanxi Tianxi Purification Filter Co., Ltd	
Sinoacarbon International Trading Co., Ltd.	
Tancarb Activated Carbon Co., Ltd.	
Tianjin Channel Filters Co., Ltd.	
Tianjin Maijin Industries Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Alloy and Certain Carbon Steel Threaded Rod, A–570–104	4/1/21–3/31/22
Ningbo Dongxin High-Strength Nut Co., Ltd.	
Ningbo Zhongjiang High Strength Bolts Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Foil, A–570–053	4/1/21–3/31/22
Anhui Maximum Aluminium Industries Company Ltd.	
Alcha International Holdings Limited	
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Limited	
Granges Aluminum (Shanghai) Co., Ltd.	
Hangzhou Dingsheng Import & Export Co., Ltd.	
Hangzhou Five Star Aluminum Co., Ltd.	
Hunan Suntown Marketing Limited	
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.	
Jiangsu Huafeng Aluminum Industry Co., Ltd.	
Jiangsu Zhongji Lamination Materials Co., Ltd.	
Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.	
Shanghai Huafon Aluminium Corporation	
Shanghai Shenyan Packaging Materials Co., Ltd.	
Suntown Technology Group Corporation Limited	
Xiamen Xiashun Aluminum Foil Co., Ltd.	
Yinbang Clad Materials Co., Ltd.	
Walson (HK) Trading Co., Limited	
THE PEOPLE'S REPUBLIC OF CHINA: Drawn Stainless Steel Stinks, A–570–983	4/1/21–3/31/22
B&R Industries Limited	
Feidong Import and Export Co., Ltd.	
Foshan Shunde MingHao Kitchen Utensils Co., Ltd.	
Foshan Zhaoshun Trade Co., Ltd.	
Franke Asia Sourcing Ltd.	
Grand Hill Work Company	
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	
Guangdong G-Top Import & Export Co., Ltd.	
Guangdong New Shichu Import & Export Company Limited	
Guangdong Yingao Kitchen Utensils Co., Ltd.	
Hangzhou Heng's Industries Co., Ltd.	
Hubei Foshan Success Imp & Exp Co. Ltd.	
J&C Industries Enterprise Limited	
Jiangmen Hongmao Trading Co., Ltd.	
Jiangmen New Star Hi-Tech Enterprise Ltd.	
Jiangmen Pioneer Import & Export Co., Ltd.	
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.	
KaiPing Dawn Plumbing Products, Inc.	
Ningbo Afa Kitchen and Bath Co., Ltd./Yuyao Afa Kitchenware Co., Ltd.	
Ningbo Oulin Kitchen Utensils Co., Ltd.	
Primy Cooperation Limited	
Shenzhen Kehuaxing Industrial Ltd.	
Shunde Foodstuffs Import & Export Company Limited of Guangdong	
Shunde Native Produce Import and Export Co., Ltd. of Guangdong	
Xinhe Stainless Steel Products Co., Ltd.	
Zhongshan Newecan Enterprise Development Corporation	
Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong	
Zhongshan Superte Kitchenware Co., Ltd.	
Zhuhai Kohler Kitchen & Bathroom Products Co. Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof,[7] A–570–119	8/19/20–2/28/22
Honda Power Products (China) Co., Ltd.[8]	
THE PEOPLE'S REPUBLIC OF CHINA: Magnesium Metal, A–570–896	4/1/21–3/31/22
Tianjin Magnesium International Co., Ltd.	
Tianjin Magnesium Metal Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Sheet and Strip, A–570–042	4/1/21–3/31/22
Ahonest Changjiang Stainless Co., Ltd.	
Angang Guangzhou Stainless Steel Corporation	
Angang Hanyang Stainless Steel Corp.	
Anping Yuanjing Metal Products Co., Ltd.	
Apex Industries Corporation	
Baofeng Xianlong Stainless Steel (Baofeng Steel Group Co.)	

	Period to be reviewed
Baojing Steel Ltd.	
Baosteel Desheng Stainless Steel Co., Ltd.	
Baosteel Stainless Steel Co., Ltd.	
Baotou Huayong Stainless Steel Co., Ltd.	
Beihai Chengde Ferronickel Stainless Steel	
Beijing Dayang Metal Industry Co.	
Beijing Hengsheng Tongda Stainless Steel	
Beijing Jingnanfang Decoration Engineering Co., Ltd.	
Benxi Iron and Steel	
Chain Chon Metal (Foshan)	
Chain Chon Metal (Kunshan)	
Changhai Stainless Steel	
Changzhou General Import and Export	
Changzhou Taiye Sensing Technology Co., Ltd.	
Compart Precision Co.	
Dalian Yirui Import and Export Agent Co., Ltd.	
Daming International Import and Export Co., Ltd.	
Dongbei Special Steel Group Co., Ltd.	
Double Stone Steel	
Etco (China) International Trading Co., Ltd.	
FHY Corporation	
Foshan Foreign Economic Enterprise	
Foshan Hermes Steel Co., Ltd.	
Foshan Jinfeifan Stainless Steel Co.	
Foshan Topson Stainless Steel Co.	
Fugang Group	
Fujian Fuxin Special Steel Co., Ltd.	
Fujian Kaixi Stainless Steel	
Fujian Wuhang STS Products Co., Ltd.	
Gangzhan Steel Developing Co., Ltd.	
Globe Express Services Co., Ltd.	
Golden Fund International Trading Co.	
Guangdong Forward Metal Supply Chain Co., Ltd.	
Guangdong Guangxin Suntec Metal Holdings Co., Ltd.	
Guanghan Tiancheng Stainless Steel Products Co., Ltd.	
Guangxi Beihai Chengde Group	
Guangxi Wuzhou Jinhai Stainless Steel Co.	
Guangxi Wuzhou Jinhai Stainless Steel Co.	
Guangzhou Eversunny Trading Co., Ltd.	
Haimen Senda Decoration Material Co.	
Hanyang Stainless Steel Co. (LISCO)	
Hebei Iron & Steel	
Henan Tianhong Metal (Subsidiary of Foshan Mellow Stainless Steel Company)	
Henan Xinjinhui Stainless Steel Co., Ltd. (Jinhui Group)	
Henan Xuyuan Stainless Steel Co.	
Huadi Steel Group Co., Ltd.	
Ideal Products of Dongguan Ltd.	
Irestal Shanghai Stainless Pipe (ISSP)	
Jaway Metal Co., Ltd.	
Jiangdu Ao Jian Sports Apparatus Factory	
Jiangsu Daming Metal Products Co., Ltd.	
Jiangsu Jihongxin Stainless Steel Co., Ltd.	
Jiaxing Winner Import and Export Co., Ltd.	
Jiaxing Zhongda Import and Export Co., Ltd.	
Jieyang Baowei Stainless Steel Co., Ltd	
Jinyun Xintongmao	
Jiuquan Iron & Steel (JISCO)	
Kuehne & Nagel, Ltd. (Ningbo)	
La Qin (Hong Kong) Co., Ltd.	
Lianzhong Stainless Steel Corp. (LISCO)	
Maanshan Sungood Machinery Equipment Co., Ltd.	
Minmetals Steel Co., Ltd.	
Nanhi Tengshao Metal Manufacturing Co.	
NB (Ningbo) Rilson Export & Import Corp.	
Ningbo Baoxin Stainless Steel Co., Ltd.	
Ningbo Bestco Import & Export Co., Ltd.	
Ningbo Bingcheng Import & Export Co., Ltd.	
Ningbo Chinaworld Grand Import & Export Co., Ltd.	
Ningbo Dawon Resources Co., Ltd. No.	
Ningbo Economic and Technological Development Zone (Beilun Xiapu)	
Ningbo Hog Slat Trading Co., Ltd.	
Ningbo New Hailong Import & Export Co.	
Ningbo Polaris Metal Products Co.	
Ningbo Portec Sealing Component	

	Period to be reviewed
Ningbo Qiyi Precision Metals Co., Ltd.	
Ningbo Seduno Import & Export Co., Ltd.	
Ningbo Sunico International Ltd.	
Ningbo Swoop Import & Export	
Ningbo Yaoyi International Trading Co., Ltd.	
Onetouch Business Service, Ltd.	
Qianyuan Stainless Steel	
Qingdao Rising Sun International Trading Co., Ltd.	
Qingdao-Pohang Stainless Steel (QPSS)	
Rihong Stainless Co., Ltd.	
Ruitian Steel	
Samsung Precision Stainless Steel (Pinghu) Co., Ltd.	
Sejung Sea & Air Co., Ltd.	
Shainghai Fengye Industry Co., Ltd.	
Shandong Huaye Stainless Steel Group Co., Ltd.	
Shandong Mengyin Huaran Imp and Exp Co., Ltd.	
Shandong Mingwei Stainless Steel Products Co., Ltd.	
Shanghai Dongjing Import & Export Co.	
Shanghai Ganglian E-Commerce Holdings Co., Ltd.	
Shanghai Krupp Stainless (SKS)	
Shanghai Tankli Alloy Material Co., Ltd. L	
Shanxi Taigang Stainless Steel Co., Ltd. (TISCO)	
Shaoxing Andrew Metal Manufactured Co., Ltd.	
Shaoxing Yuzhihang Import & Export Trade Co., Ltd.	
Shenzhen Brilliant Sign Co., Ltd.	
Sichuan Southwest Stainless Steel	
Sichuan Tianhong Stainless Steel	
Sino Base Metal Co., Ltd.	
Suzhou Xinchen Precision Industrial Materials Co., Ltd.	
Taiyuan Accu Point Technology, Co. Ltd.	
Taiyuan Iron & Steel (TISCO)	
Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	
Taizhou Durable Hardware Co., Ltd.	
Tiancheng Stainless Steel Products	
Tianjin Fulida Supply Co., Ltd.	
Tianjin Hongji Stainless Steel Products Co. Ltd.	
Tianjin Jiuyu Trade Co., Ltd.	
Tianjin Taigang Daming Metal Product Co., Ltd.	
Tianjin Teda Ganghua Trade Co., Ltd.	
Tianjin Tianchengjida Import & Export Trade Co., Ltd.	
Tianjin Tianguan Yuantong Stainless Steel	
Tiashan Steel	
TISCO Stainless Steel (HK) Ltd.	
Top Honest Stainless Steel Co., Ltd.	
TPCO Yuantong Stainless Steel Ware	
Tsingshan Qingyuan	
World Express Freight Co., Ltd.	
Wuxi Baochang Metal Products Co., Ltd.	
Wuxi Fangzhu Precision Materials Co.	
Wuxi Grand Tang Metal Co., Ltd.	
Wuxi Jinyate Steel Co., Ltd.	
Wuxi Shuoyang Stainless Steel Co., Ltd.	
Xinwen Mining Xinwen	
Yieh Corp. Ltd.	
Yongjin Metal Technology	
Yuyao Purenovo Stainless Steel Co., Ltd.	
Zhangjiagang Pohang Stainless Steel Co., Ltd. (ZPSS)	
Zhejiang Jaguar Import & Export Co., Ltd.	
Zhejiang Yongjin Metal Technology Co., Ltd.	
Zhejiang Yongyin Metal Tech Co.	
Zhengzhou Mingtai Industry Co., Ltd.	
Zhenjiang Huaxin Import & Export	
Zhenshi Group Eastern Special Steel Co., Ltd.	
Zun Hua City Transcend Ti-Gold	
THE PEOPLE'S REPUBLIC OF CHINA: Twist Ties, A–570–131	12/10/20–3/31/22
A&H Qingdao Ltd.	
Decent Information Technology Guang	
Dongguan Guanqiao Industrial Co., Ltd.	
Dongguan Kinshun Packing Materials	
Essentra Plastic Products Co., Ltd.	
Foshan Shunde Ronggui Yingli Industrial Co., Ltd.	
GSM Sales LLC	
Haobo International Logistics	
Hong Kong Bestime Group Co.	

	Period to be reviewed
Hongkong Milley Ltd.	
King Freight International Corp.	
Ningbo Hao He International	
Ningbo Huamu Imp. & Exp. Co., Ltd.	
Qingdao Supouches Packaging LLC	
Rongfa Plastic Products Co., Ltd. (also known as Zhenjiang Rongfa Plastic Co., Ltd)	
Shenzhen Fuxin Technology Co., Ltd.	
Shenzhen Shi Kule International Trading Co.	
Shenzhen Syntrans International	
Simple Symbol (Holding) Ltd.	
Source Access Ltd.	
Tianjin Kyoei Packaging Supplies Co., Ltd.	
Yiwu Huaxini Pet Products Co., Ltd.	
Yiwu Kurui Handicraft Co. Ltd.	
Zhejiang Mingyue Packaging Co., Ltd.	
Zhenjiang Hongda Commodity Co., Ltd.	
Zhenjiang Zhonglian I/E Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Cabinets and Vanities and Components Thereof, A–570–106	4/1/21–3/21/22
Anhui Xinyuanda Cupboard Co., Ltd.	
Dalian Hualing Wood Co., Ltd.	
Dalian Meisen Woodworking Co., Ltd.	
Deqing Meisheng Import and Export Co., Ltd.	
Dongguan Ri Sheng Home Furnishing Articles Co., Ltd.	
Fujian Dushi Wooden Industry Co., Ltd.	
Fujian Senyi Kitchen Cabinet Co., Ltd.	
Fuzhou Hauster Kitchen Cabinet Manufacturing Co., Ltd.	
Fuzhou Pyrashine Trading Co., Ltd.	
Goldenhome Living Co., Ltd.	
Guangzhou Nuolande Import and Export Co., Ltd.	
Hangzhou Hoca Kitchen & Bath Products Co., Ltd.	
Jiang Su Rongxin Cabinets Ltd.	
Jiang Su Rongxin Import and Export Co., Ltd.	
Jiang Su Rongxin Wood Industry Co., Ltd	
Jiangsu Sunwell Cabinetry Co., Ltd.	
Jiangsu Weisen Houseware Co., Ltd	
KM Cabinetry Co., Limited	
Km Cabinetry Co., Ltd.	
Kunshan Baiyulan Furniture Co., Ltd.	
Linshu Meibang Furniture Co., Ltd.	
Linyi Bomei Furniture Co., Ltd	
Linyi Kaipu Furniture Co., Ltd.	
Morewood Cabinetry Co., Ltd.	
Nantong Aershin Cabinets Co., Ltd.	
Quanzhou Ample Furnishings Co., Ltd.	
Qufu Xinyu Furniture Co., Ltd.	
Senke Manufacturing Company	
Shandong Longsen Woods Co., Ltd.	
Shanghai Beautystar Cabinetry Co., Ltd.	
Shanghai Zifeng Industries Development Co., Ltd.	
Shanghai Zifeng International Trading Co., Ltd	
Sheen Lead International Trading (Shanghai) Co., Ltd.	
Shenzhen Pengchengzhirong Trade Co., Ltd.	
Shouguang Fushi Wood Co., Ltd.	
Suzhou Siemo Wood Import & Export Co., Ltd.	
Taishan Oversea Trading Co., Ltd.	
Taizhou Overseas Int'l Ltd.	
Tech Forest Cabinetry Co., Ltd.	
The Ancientree Cabinet Co., Ltd.	
Weifang Fuxing Wood Co., Ltd.	
Weihai Jarlin Cabinetry Manufacture Co., Ltd.	
Weisen Houseware Co., Ltd.	
Xiamen Adler Cabinetry Co., Ltd.	
Xiamen Got Cheer Co., Ltd.	
Yichun Dongmeng Wood Co., Ltd.	
Yindu Kitchen Equipment Co., Ltd.	
Yixing Pengjia Cabinetry Co., Ltd.	
Yixing Pengjia Technology Co., Ltd.	
Zaozhuang New Sharp Import & Export Trading Co., Ltd.	
ZBOM Cabinets Co., Ltd.	
Zhangzhou OCA Furniture Co., Ltd.	
Zhongshan KM Cabinetry Co., Ltd.	
Zhoushan For-strong Wood Co., Ltd.	
TURKEY: Common Alloy Aluminum Sheet, A–489–839	10/15/20–3/31/22
ASA Alüminyum Sanayi ve Ticaret A.Ş	

	Period to be reviewed
Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Americas, Inc., and Kibar Dis Ticaret A.S. (collectively, ''Assan'')	
Panda Aluminyum A.Ş.	
PMS Metal Profil Aluminyum Sanayi ve Ticaret A.Ş.	
TAC Metal Ticaret Anonim Sirketi	
Teknik Alüminyum Sanayi A.S.	
CVD Proceedings	
INDIA: Common Alloy Aluminum Sheet, C–533–896	8/14/20–12/31/21
Hindalco Industries Limited	
Virgo Aluminum Limited	
KAZAKHSTAN: Silicon Metal,[9] C–834–811	12/3/20–12/31/21
JSC NMC Tau-Ken Samruk	
Tau-Ken Temir LLP	
MOROCCO: Phosphate Fertilizers, C–714–001	11/30/20 –12/31/21
OCP S.A.	
RUSSIA: Phosphate Fertilizers, C–821–825	11/30/20 –12/31/21
Industrial Group Phosphorite LLC [10]	
Joint Stock Company Apatit [11]	
THE PEOPLE'S REPUBLIC OF CHINA: Alloy and Certain Carbon Steel Threaded Rod, C–570–105	1/1/21–12/31/21
Ningbo Dongxin High-Strength Nut Co., Ltd.	
Ningbo Zhongjiang High Strength Bolts Co., Ltd.[12]	
Zhejiang Junyue Standard Part Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Foil, C–570–054	1/1/21–12/31/21
Alcha International Holdings Limited	
Anhui Maximum Aluminium Industries Company Ltd.	
Baotou Alcha Aluminum Co., Ltd.	
Dingsheng Aluminium Industries (Hong Kong) Trading Co., Ltd.	
Gränges Aluminum (Shanghai) Co., Ltd.	
Guangxi Baise Xinghe Aluminum Industry Co., Ltd.	
Hangzhou DingCheng Aluminium Co., Ltd.	
Hangzhou Dingsheng Import & Export Co. Ltd.	
Hangzhou Dingsheng Industrial Group Co. Ltd.	
Hangzhou Five Star Aluminium Co., Ltd.	
Hangzhou Teemful Aluminum Co., Ltd.	
Hunan Suntown Marketing Limited	
Jiangyin Dolphin Pack Ltd. Co.	
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.	
Jiangsu Huafeng Aluminum Industry Co., Ltd.	
Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a/Jiangsu Zhongji Lamination Materials Stock Co., Ltd.)	
Jiangsu Zhongji Lamination Materials Co., (HK) Limited	
Luoyang Longding Aluminium Industries Co., Ltd.	
Shandong Yuanrui Metal Material Co., Ltd.	
Shanghai Huafon Aluminium Corporation	
Shanghai Shenyan Packaging Materials Co., Ltd.	
Shantou Wanshun Package Material Stock Co., Ltd.	
SNTO International Trade Limited	
Suntown Technology Group Corporation Limited	
Walson (HK) Trading Co., Limited	
Xiamen Xiashun Aluminum Foil Co., Ltd.	
Yantai Donghai Aluminum Co., Ltd.	
Yantai Jintai International Trade Co., Ltd.	
Yinbang Clad Material Co., Ltd.	
Zhejiang Zhongjin Aluminum Industry Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Stainless Steel Sheet and Strip, C–570–043	1/1/21–12/31/21
Ahonest Changjiang Stainless Co., Ltd.	
Angang Guangzhou Stainless Steel Corporation	
Angang Hanyang Stainless Steel Corp.	
Anping Yuanjing Metal Products Co., Ltd.	
Apex Industries Corporation	
Baofeng Xianlong Stainless Steel (Baofeng Steel Group Co.)	
Baojing Steel Ltd.	
Baosteel Desheng Stainless Steel Co., Ltd.	
Baosteel Stainless Steel Co., Ltd.	
Baotou Huayong Stainless Steel Co., Ltd.	
Beihai Chengde Ferronickel Stainless Steel	
Beijing Dayang Metal Industry Co.	
Beijing Hengsheng Tongda Stainless Steel	
Beijing Jingnanfang Decoration Engineering Co., Ltd.	
Benxi Iron and Steel	
Chain Chon Metal (Foshan)	
Chain Chon Metal (Kunshan)	
Changhai Stainless Steel	
Changzhou General Import and Export	
Changzhou Taiye Sensing Technology Co., Ltd.	
Compart Precision Co.	

	Period to be reviewed
Dalian Yirui Import and Export Agent Co., Ltd.	
Daming International Import and Export Co., Ltd.	
Dongbei Special Steel Group Co., Ltd.	
Double Stone Steel	
Etco (China) International Trading Co., Ltd.	
FHY Corporation	
Foshan Foreign Economic Enterprise	
Foshan Hermes Steel Co., Ltd.	
Foshan Jinfeifan Stainless Steel Co.	
Foshan Topson Stainless Steel Co.	
Fugang Group	
Fujian Fuxin Special Steel Co., Ltd.	
Fujian Kaixi Stainless Steel	
Fujian Wuhang STS Products Co., Ltd.	
Gangzhan Steel Developing Co., Ltd.	
Globe Express Services Co., Ltd.	
Golden Fund International Trading Co.	
Guangdong Forward Metal Supply Chain Co., Ltd.	
Guangdong Guangxin Suntec Metal Holdings Co., Ltd.	
Guanghan Tiancheng Stainless Steel Products Co., Ltd.	
Guangxi Beihai Chengde Group	
Guangxi Wuzhou Jinhai Stainless Steel Co.	
Guangzhou Eversunny Trading Co., Ltd.	
Haimen Senda Decoration Material Co.	
Hanyang Stainless Steel Co. (LISCO)	
Hebei Iron & Steel	
Henan Tianhong Metal (Subsidiary of Foshan Mellow Stainless Steel Company)	
Henan Xinjinhui Stainless Steel Co., Ltd. (Jinhui Group)	
Henan Xuyuan Stainless Steel Co.	
Huadi Steel Group Co., Ltd.	
Ideal Products of Dongguan Ltd.	
Irestal Shanghai Stainless Pipe (ISSP)	
Jaway Metal Co., Ltd.	
Jiangdu Ao Jian Sports Apparatus Factory	
Jiangsu Daming Metal Products Co., Ltd.	
Jiangsu Jihongxin Stainless Steel Co., Ltd.	
Jiaxing Winner Import and Export Co., Ltd.	
Jiaxing Zhongda Import and Export Co., Ltd.	
Jieyang Baowei Stainless Steel Co., Ltd.	
Jinyun Xintongmao	
Jiuquan Iron & Steel (JISCO)	
Kuehne & Nagel, Ltd. (Ningbo)	
La Qin (Hong Kong) Co., Ltd.	
Lianzhong Stainless Steel Corp. (LISCO)	
Maanshan Sungood Machinery Equipment Co., Ltd.	
Minmetals Steel Co., Ltd.	
Nanhi Tengshao Metal Manufacturing Co.	
NB (Ningbo) Rilson Export & Import Corp.	
Ningbo Baoxin Stainless Steel Co., Ltd.	
Ningbo Bestco Import & Export Co., Ltd.	
Ningbo Bingcheng Import & Export Co., Ltd.	
Ningbo Chinaworld Grand Import & Export Co., Ltd.	
Ningbo Dawon Resources Co., Ltd. No.	
Ningbo Economic and Technological Development Zone (Beilun Xiapu)	
Ningbo Hog Slat Trading Co., Ltd.	
Ningbo New Hailong Import & Export Co.	
Ningbo Polaris Metal Products Co.	
Ningbo Portec Sealing Component	
Ningbo Qiyi Precision Metals Co., Ltd.	
Ningbo Seduno Import & Export Co., Ltd.	
Ningbo Sunico International Ltd.	
Ningbo Swoop Import & Export	
Ningbo Yaoyi International Trading Co., Ltd.	
Onetouch Business Service, Ltd.	
Qianyuan Stainless Steel	
Qingdao Rising Sun International Trading Co,. Ltd.	
Qingdao-Pohang Stainless Steel (QPSS)	
Rihong Stainless Co., Ltd.	
Ruitian Steel	
Samsung Precision Stainless Steel (Pinghu) Co., Ltd.	
Sejung Sea & Air Co., Ltd.	
Shainghai Fengye Industry Co., Ltd.	
Shandong Huaye Stainless Steel Group Co., Ltd.	
Shandong Mengyin Huaran Imp and Exp Co., Ltd.	

	Period to be reviewed
Shandong Mingwei Stainless Steel Products Co., Ltd.	
Shanghai Dongjing Import & Export Co.	
Shanghai Ganglian E-Commerce Holdings Co., Ltd.	
Shanghai Krupp Stainless (SKS)	
Shanghai Tankli Alloy Material Co., Ltd. L	
Shanxi Taigang Stainless Steel Co., Ltd. (TISCO)	
Shaoxing Andrew Metal Manufactured Co., Ltd.	
Shaoxing Yuzhihang Import & Export Trade Co., Ltd.	
Shenzhen Brilliant Sign Co., Ltd.	
Sichuan Southwest Stainless Steel	
Sichuan Tianhong Stainless Steel	
Sino Base Metal Co., Ltd.	
Suzhou Xinchen Precision Industrial Materials Co., Ltd.	
Taiyuan Accu Point Technology, Co. Ltd.	
Taiyuan Iron & Steel (TISCO)	
Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	
Taizhou Durable Hardware Co., Ltd	
Tiancheng Stainless Steel Products	
Tianjin Fulida Supply Co., Ltd.	
Tianjin Hongji Stainless Steel Products Co. Ltd.	
Tianjin Jiuyu Trade Co., Ltd.	
Tianjin Taigang Daming Metal Product Co., Ltd.	
Tianjin Teda Ganghua Trade Co., Ltd.	
Tianjin Tianchengjida Import & Export Trade Co., Ltd.	
Tianjin Tianguan Yuantong Stainless Steel	
Tiashan Steel	
TISCO Stainless Steel (HK) Ltd.	
Top Honest Stainless Steel Co., Ltd.	
TPCO Yuantong Stainless Steel Ware	
Tsingshan Qingyuan	
World Express Freight Co., Ltd.	
Wuxi Baochang Metal Products Co., Ltd.	
Wuxi Fangzhu Precision Materials Co.	
Wuxi Grand Tang Metal Co., Ltd.	
Wuxi Jinyate Steel Co., Ltd.	
Wuxi Shuoyang Stainless Steel Co., Ltd.	
Xinwen Mining Xinwen	
Yieh Corp. Ltd.	
Yongjin Metal Technology	
Yuyao Purenovo Stainless Steel Co., Ltd.	
Zhangjiagang Pohang Stainless Steel Co., Ltd. (ZPSS)	
Zhejiang Jaguar Import & Export Co., Ltd.	
Zhejiang Yongjin Metal Technology Co., Ltd.	
Zhejiang Yongyin Metal Tech Co.	
Zhengzhou Mingtai Industry Co., Ltd.	
Zhenjiang Huaxin Import & Export	
Zhenshi Group Eastern Special Steel Co., Ltd	
Zun Hua City Transcend Ti-Gold	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, C–570–041	1/1/21–12/31/21
Double Coin Group (Jiangsu) Tyre Co., Ltd.[13]	
THE PEOPLE'S REPUBLIC OF CHINA: Twist Ties, C–570–132	12/10/20–3/31/22
Decent Information Technology Guang	
Dongguan Guanqiao Industrial Co., Ltd.	
Dongguan Kinshun Packing Materials	
Essentra Plastic Products Co., Ltd.	
Foshan Shunde Ronggui Yingli Industrial Co., Ltd.	
GSM Sales LLC	
Haobo International Logistics	
Hong Kong Bestime Group Co.	
Hongkong Milley Ltd.	
King Freight International Corp.	
Ningbo Hao He International	
Ningbo Huamu Imp. & Exp. Co., Ltd.	
Rongfa Plastic Products Co., Ltd. (aka Zhenjiang Rongfa Plastic Co., Ltd)	
Shenzhen Fuxin Technology Co., Ltd.	
Shenzhen Shi Kule International Trading Co.	
Simple Symbol (Holding) Ltd.	
Tianjin Kyoei Packaging Supplies Co., Ltd.	
Yiwu Huaxini Pet Products Co., Ltd.	
Yiwu Kurui Handicraft Co. Ltd.	
Zhejiang Mingyue Packaging Co., Ltd.	
Zhenjiang Hongda Commodity Co. Ltd.	
Zhenjiang Zhonglian VE Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Cabinets and Vanities and Components Thereof, C–570–107	1/1/21–12/31/21

	Period to be reviewed
Anhui Xinyuanda Cupboard Co., Ltd	
Fujian Dushi Wooden Industry Co., Ltd.	
Guangzhou Nuolande Import and Export Co., Ltd.	
Jiang Su Rongxin Wood Industry Co., Ltd	
Jiang Su Rongxin Cabinets Ltd	
Jiangsu Sunwell Cabinetry Co., Ltd	
Jiangsu Weisen Houseware Co., Ltd	
KM Cabinetry Co, Ltd.	
Linyi Bomei Furniture Co., Ltd	
Linyi Kaipu Furniture Co., Ltd.	
Nantong Aershin Cabinet Co., Ltd.	
Qufu Xinyu Furniture Co., Ltd.	
Senke Manufacturing Company	
Shandong Longsen Woods Co., Ltd.	
Shanghai Beautystar Cabinetry Co., Ltd.	
Shanghai Zifeng International Trading Co., Ltd	
Sheen Lead International Trading (Shanghai) Co., Ltd.	
Shouguang Fushi Wood Co., Ltd.	
Taishan Oversea Trading Company Ltd.	
Taizhou Overseas Int'l Ltd.	
The Ancientree Cabinet Co., Ltd.[14]	
Weifang Fuxing Wood Co., Ltd.	
Xiamen Adler Cabinetry Co., Ltd.	
Yichun Dongmeng Wood Co., Ltd	
Yixing Pengjia Technology Co., Ltd.	
Yixing Pengjia Cabinetry Co., Ltd.	
Zaozhuang New Sharp Import & Export Trading Co., Ltd	
Zhoushan For-strong Wood Co., Ltd	
TURKEY: Common Alloy Aluminum Sheet, C–489–840	8/14/20–12/31/21
Assan Aluminyum Sanayi ve Ticaret A.S.	
Kibar Americas, Inc.,	
Kibar Dis Ticaret A.S.	
P.M.S. Metal Profil Aluminyum Sanayi Ve Ticaret A.S.	
Teknik Aluminyum Sanayi A.S.	

Suspension Agreements

None.

[5] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 73731 (December 28, 2021). We also received a review request for Jacobi Carbons, Inc., however, Jacobi Carbons, Inc. is a U.S. affiliate of Jacobi Carbons AB.

[6] Commerce determined that Ningxia Huahui Environmental Technology Co., Ltd. is the successor-in-interest of Ningxia Huahui Activated Carbon Co., Ltd. *See Certain Activated Carbon from the People's Republic of China: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 86 FR 56248 (October 8, 2021).

[7] The company listed below was inadvertently omitted from the initiation notice that published on May 13, 2022 (87 FR 29280).

[8] Honda Power Products (China) Co., Ltd. claims to be, and on June 2, 2022, Commerce preliminarily found, the successor-in-interest to Jialing-Honda Motors Co., Ltd.

[9] In the notice of opportunity to request an administrative review, Commerce inadvertently published an incorrect POR (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 19075 (April 1, 2022)). Commerce is publishing the correct POR in this initiation notice and parties are hereby notified that they should file future submissions in ACCESS to the segment with this correct POR.

[10] Industrial Group Phosphorite LLC is a member of the EuroChem Group.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

[11] Joint Stock Company Apatit is a member of the PhosAgro Group and is also known as JSC Apatit.

[12] Commerce previously found Ningbo Zhongmin Metal Product Co., Ltd. to be a cross-owned affiliate of Ningbo Zhongjiang High Strength Bolts Co., Ltd. *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Countervailing Duty Orders,* 85 FR 19927 (April 9, 2020).

[13] The name of this company was incorrectly listed as Double Coin Group (Jiangsu) Tire Co., Ltd. in the initiation notice which published on April 12, 2022. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619, 21621 (April 12, 2022).

[14] Commerce previously found the following companies to be cross owned with The Ancientree Cabinet Co., Ltd.: Jiangsu Hongjia Wood Co., Ltd.; Jiangsu Hongjia Wood Co., Ltd. Shanghai Branch; and Shanghai Hongjia Wood Co., Ltd. *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order,* 85 FR 22134 (April 21, 2020).

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews

included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[15] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[17] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[18] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: June 6, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–12470 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[17] *See* section 782(b) of the Act; *see also Final Rule*; and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[18] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB888]

Endangered and Threatened Species; Notice of Availability of an Interim Report on Post-Delisting Monitoring of Nine Distinct Population Segments of Humpback Whales and Notice of Intent To Prepare a Recovery Plan for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: NMFS is announcing the availability of an interim report for the post-delisting monitoring of nine distinct population segments (DPSs) of humpback whales (*Megaptera novaeangliae*). NMFS is also announcing its intent to prepare a recovery plan for three DPSs of humpback whales and requests information from the public. The Endangered Species Act (ESA) requires NMFS to develop a system to monitor the status of all species that have been recovered and removed from the lists of threatened and endangered species. The available interim report references the post-delisting monitoring plan that was developed for the nine humpback whale DPSs that are not listed as threatened or endangered. This interim report consolidates and evaluates available monitoring data from several-year intervals to summarize the best available information regarding the status of the nine non-listed humpback whale DPSs. The ESA also generally requires NMFS to develop plans for the conservation and survival of federally listed species, *i.e.,* recovery plans. The current species-wide recovery plan originally prepared in 1991 will be replaced by a new recovery plan specific to the endangered Western North Pacific DPS, the endangered Central America DPS, and the threatened Mexico DPS of humpback whales. We request submission of any information on these DPSs of humpback whales, particularly information on the status, threats, and recovery of the DPSs that has become available since the listing status was revised in 2016 and was not considered as part of the critical habitat designation in 2021.

DATES: To allow us adequate time to conduct this review, we must receive

your information no later than July 11, 2022.

ADDRESSES: You may submit information on this document, identified by NOAA–NMFS–2022–0039, by the following method:

• *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0039 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the specified period, might not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Caroline Good by phone at (301) 427–8445 or *Caroline.Good@noaa.gov.*

SUPPLEMENTARY INFORMATION: In 2016, NMFS revised the listing status of the humpback whale under the ESA. The globally listed endangered species was divided into 14 DPSs, the species-level listing was removed, and NMFS listed four DPSs as endangered and one DPS as threatened (81 FR 62260, September 8, 2016). Under section 4(g) of the ESA, and joint guidance from NMFS and U.S. Fish and Wildlife Service, NMFS is to monitor, for a minimum of five years, any species delisted due to its recovery (guidance is available at: *https://media.fisheries.noaa.gov/dam-migration/final_pdm_guidance-fws_and_nmfs-updated_7-2-18_508_compliant.pdf*). Although nine DPSs of humpback whales no longer qualified for listing and thus were technically not ''delisted'', for the reasons explained in the ESA listing final rule, NMFS considered it appropriate to monitor the status of the populations that were no longer listed.

As a result, in 2016, NMFS implemented a 10-year plan to carry out the required monitoring for nine DPSs of humpback whales: the Hawai'i, West Indies, Brazil, West Australia, East Australia, Southeastern Pacific, Oceania, Southeast Africa/Madagascar, and Gabon/Southwest Africa DPSs (available at *https://www.fisheries.noaa.gov/resource/document/monitoring-plan-nine-distinct-population-segments-humpback-whale-megaptera*). This notice announces the availability of an interim report, which provides an evaluation of available monitoring data from 2017 to 2021 and summarizes the best available information regarding the status of the nine non-listed humpback whale DPSs. The interim report is available online at *https://www.fisheries.noaa.gov/species/humpback-whale#conservation-management* or upon request from the NMFS Office of Science and Technology.

NMFS is required by section 4(f) of the ESA to develop and implement recovery plans for the conservation and survival of federally listed species unless the Secretary finds that such a plan will not promote the conservation of the species. Recovery means improvement in the status of listed species to the point at which the protections of the ESA are no longer necessary. Section 4(f)(1)(B) of the ESA specifies that recovery plans must include, to the maximum extent practicable: (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (ii) objective, measurable criteria which when met, would result in a determination that the species be removed from the list; and (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

NMFS previously determined that a recovery plan would not promote the conservation of the Arabian Sea and Cape Verde Islands/Northwest Africa DPSs (Memorandum for Chris Oliver, Assistant Administrator for Fisheries, from Donna Wieting, Director, Office of Protected Resources (Sep. 12, 2019) (regarding Cape Verde/Northwest Africa DPS); Memorandum for Chris Oliver, Assistant Administrator for Fisheries, from Donna Wieting, Director, Office of Protected Resources (Dec. 11, 2019) (regarding Arabian Sea DPS)). This notice announces our intent to replace the species-wide humpback whale recovery plan with a new plan specific to the endangered Western North Pacific DPS, the endangered Central America DPS, and the threatened Mexico DPS. In the interim, the recovery strategy for these DPSs will be guided by the existing species-wide plan and a new DPS-specific recovery outline under development. Critical habitat was designated for these DPSs in 2021 (86 FR 21082, April 21, 2021).

Background information on the species is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/humpback-whale.*

Public Solicitation of New Information

Section 4(f)(4) of the ESA requires that public notice and an opportunity for public review and comment be provided prior to final approval of a new or revised recovery plan. Further, section 4(f)(5) mandates that all information presented during the public comment period is considered prior to implementing a new or revised recovery plan. To ensure that recovery plan development is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Western North Pacific, Mexico, and Central America DPSs of humpback whale. Such information should address: (a) criteria for removing these whales from the lists of threatened and endangered species; (b) factors that are presently limiting, or threaten to limit, the survival of these humpback whales distinct population segments; (c) actions to address limiting factors and threats; (d) estimates of time and cost to implement recovery actions; and (e) research, monitoring, and evaluation needs. Upon completion, the draft recovery plan will be available for public review and comment through the publication of a **Federal Register** Notice.

If you wish to provide information for review, you may submit your information and materials electronically (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 3, 2022.

Angela Somma,

Division Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–12461 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Trawl Logbook Requirement

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 11, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: West Coast Region Trawl Logbook Requirement.

OMB Control Number: 0648–0782.

Form Number(s): None.

Type of Request: Regular Submission (extension of a currently approved collection).

Number of Respondents: 27.

Average Hours per Response: 8 hours.

Total Annual Burden Hours: 648 hours.

Needs and Uses: This request is a renewal of an existing package. The success of fisheries management programs depends significantly on the availability of fishery data. Currently, the states of Washington, Oregon, and California administer a trawl logbook on behalf of the Pacific Fishery Management Council (Council) and NOAA's National Marine Fisheries Service (NMFS). The log used is a standard format developed by the Council to collect information necessary to effectively manage the fishery on a coast-wide basis. The trawl logbook collects haul-level effort data including tow time, tow location, depth of catch, net type, target strategy, and estimated pounds of fish retained per tow. Each trawl log represents a single fishing trip. The state of California repealed their requirement, effective April 1, 2019, therefore, NMFS created a federal requirement in order to maintain logbook coverage from trawl vessels in California.

This federal requirement duplicates the logbook structure and process that the state of California was using in order to minimize disruption or confusion for fishery participants. Under this rule, NMFS contracts with the Pacific States Marine Fisheries Commission (PSMFC) to distribute and collect the same logbook these fishermen were using previously. These data are used regularly by NMFS, the Pacific Fishery Management Council, the West Coast Groundfish Observer Program, NMFS Office of Law Enforcement, and the Coast Guard for fisheries management and enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at § 660.13(a)(1) specify reporting requirements for vessels using trawl gear in a state without a state requirement for the completion and submission of a trawl logbook.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0782.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–12442 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC004]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Chevron Point Orient Wharf Removal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive IHAs to the Chevron Products Company (Chevron) to incidentally harass marine mammals during in-water construction activities associated with the Point Orient Wharf Removal in San Francisco Bay, California.

DATES: These authorizations are effective from June 1, 2022 through May 31, 2023 and June 1, 2023 through May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-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) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses

(referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On January 11, 2022, NMFS received a request from Chevron for 2 consecutive IHAs to take marine mammals incidental to the Point Orient Wharf Removal in San Francisco Bay, California. The application was deemed adequate and complete on April 4, 2022. Chevron's request is for take of seven species of marine mammals by Level B harassment only. Neither Chevron nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Chevron for vibratory pile driving and removal work (82 FR 27240, June 14, 2017; 83 FR 27548, June 13, 2018; 84 FR 28474, June 19, 2019; 85 FR 37064, June 19, 2020; 86 FR 28582, May 27, 2021). Chevron complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Description of Marine Mammals in Areas of the Specified Activity section of the **Federal Register** notice for the proposed IHAs (87 FR 24950, April 27, 2022) and the Estimated Take section.

There are no changes from the proposed IHA to the final IHA.

Description of Proposed Activity

Overview

Chevron proposes to remove the decommissioned Point Orient Wharf (the Wharf) located in northeastern San Francisco Bay (the Bay), CA. The Wharf covers an area of approximately 8,094 m (2 acres) and extends just about 396 m (1,300 feet) into the Bay. Over the course of two years spanning from June 1, 2022–November 30, 2022 and June 1, 2023–November 30, 2023, Chevron will remove the Wharf in its entirety and restore eelgrass to the surrounding subtidal habitat, enhancing the environment of the Bay. Vibratory pile removal will be used to extract piles. This method is considered a non-impulsive continuous noise source that may result in the incidental take of marine mammals by Level B harassment in the form of behavioral harassment. NMFS has issued an IHA to Chevron for each of the two project years.

Dates and Duration

Chevron anticipates that removal of the Wharf will occur over two years. The in-water work window is anticipated to last from June 1 to November 30 in 2022 (Year 1) and June 1 to November 30 in 2023 (Year 2), although vibratory extraction will only occur in 12 weeks of each annual work period. The seasonal work window of June through November each year is planned based upon the expectation that sensitive life stages of listed fish species, such as steelhead and salmon, will not be in the area. Construction will consist of approximately 100 in-water work days only during daylight hours.

Specific Geographic Region

The Wharf is located in central San Francisco Bay (the Bay) on the western side of Point San Pablo, approximately 2.9 km (1.8 miles) north of the eastern terminus of the Richmond San-Rafael Bridge (RSRB) in Contra Costa County (Figure 1). The Brothers Islands and Lighthouse are approximately 800 meters (2,600 feet) to the north of the Wharf. The Wharf is located near a shipping channel, and regular boat traffic in the vicinity accounts for the majority of ambient underwater noise in the area.

The Point Orient Wharf consists of two portions: a narrower portion of the Wharf that runs perpendicular to the shoreline, known as the Causeway and which will be removed in Year 1, and a wider portion that runs parallel to the shoreline, known as the Main Wharf and which will be removed in Year 2. While the Wharf was in use, a dredged channel and berthing area with a depth of approximately 10 m (33 feet) below mean lower low water (MLLW) was maintained on the western side of the Main Wharf. However, since the Wharf was decommissioned, the channel and berthing area have filled in with sediment. A deep scour pocket of approximately 15.2 m (50 feet) below MLLW is maintained by tidal action west of the Main Wharf and 10 m (33 feet) below MLLW southeast of the Main Wharf. Bathymetry along the Causeway ranges from the upper intertidal at the eastern end of the Causeway to a depth of approximately 4.9 m (16 feet) below MLLW at its western end.

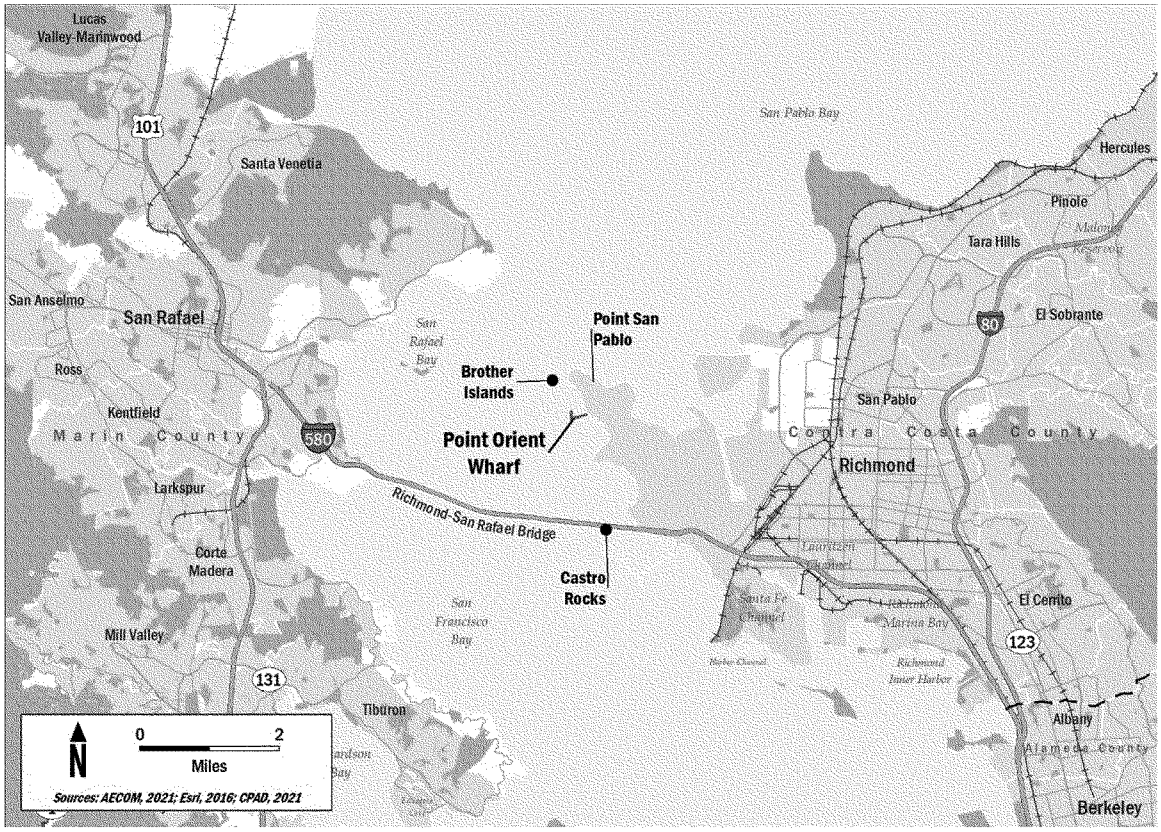


Figure 1. Point Orient Wharf Removal Project Location

Detailed Description of Specific Activity

Chevron intends to remove the Wharf in its entirety, and restore eelgrass to the subtidal habitat in areas under the Causeway portion of the Wharf that are currently affected by the shading imposed by the structure. This project will utilize vibratory removal to extract approximately 910 timber piles and 90 steel piles from the Bay (Table 1).

TABLE 1—SUMMARY OF PILE REMOVAL ACTIVITIES BY YEAR

Pile type	Diameter (inches)	Number of piles	Approximate duration of vibration per pile (minutes)	Approximate number of piles removed per day	Total number of work days
Year 1 Vibratory Extraction					
Timber	12	401	6	18	*35
Timber concrete encased	18 (12-inch timber core)	133	9	11	
Year 2 Vibratory Extraction					
Timber	12	220	6	18	*27
Timber concrete encased	18 (12-inch timber core)	156	9	11	
Steel	36	34	45	2	18
Steel	30	40	32	3	10
Steel	24	16	26	4	6

A detailed description of the planned Point Orient Wharf Removal is provided in the **Federal Register** notice for the proposed IHA (87 FR 24950; April 27, 2022). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the detailed description of the specific activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Chevron was published in the **Federal Register** on April 27, 2022 (87 FR 24950). That notice described, in detail, Chevron's activity, the marine mammal species that may be affected by

the activity, and the anticipated effects on marine mammals. No public comments were received on the proposed notice.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal SARs (*e.g.,* Carretta *et al.,* 2021). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.,* 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	29960 (0.05, 25,849, 2016).	801	131
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose Dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	≥2.0
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	San Francisco-Russian River	-, -, N	7,777 (0.62, 4,811, 2017)	73	≥0.4
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):.						
California Sea Lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	5.3
Northern Fur Seal	*Callorhinus ursinus*	California	-, D, N	14,050 (N/A, 7,524, 2013).	451	1.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI (mortality/serious injury) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all 7 species (with 7 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 4–1 of the IHA application. While humpback whales (*Megaptera noveangliae*) and Steller sea lions (*Eumetopias jubatus*) have been documented in the Bay area, the temporal and spatial occurrence of these species is such that take is not expected to occur. Therefore, they are not discussed further beyond the explanation provided in the **Federal Register** notice for the proposed IHA (87 FR 24950 April 27, 2022).

A detailed description of the species likely to be affected by Chevron's Point Orient Wharf Removal, including brief introductions to the species and relevant stocks as well as information regarding population trends and threats, and information regarding local occurrence were provided in the **Federal Register** notice for the proposed IHA (87 FR 24950 April 27, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the **Federal Register** notice for these descriptions. Please also refer to NMFS's website (*https://fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Chevron's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of the proposed IHAs (87 FR 24950; April 27, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Chevron's construction activities on marine mammals and their habitat. That information and analysis is not repeated here; please refer to the notice of proposed IHAs (87 FR 24950; April 27, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through these IHAs, which informed both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS, for individual marine mammals resulting from exposure to vibratory pile removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones and protected species monitoring)—discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms).

Chevron's Point Orient Wharf Removal includes the use of continuous non-impulsive (vibratory pile removal) sources, and therefore the RMS SPL 120 re 1 μPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Chevron's Point Orient Wharf Removal includes the use non-impulsive vibratory pile removal.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1*: $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 1183 dB.	*Cell 2*: $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3*: $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 1185 dB.	*Cell 4*: $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans ...	*Cell 5*: $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB.	*Cell 6*: $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) ..... (Underwater)	*Cell 7*: $L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 1185 dB.	*Cell 8*: $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) ..... (Underwater)	*Cell 9*: $L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB.	*Cell 10*: $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

Pile extraction using a vibratory hammer will generate underwater noise that potentially could result in disturbance to marine mammals near the project area. A review of underwater sound measurements for similar projects was conducted to estimate the near-source sound levels for vibratory pile extraction for each pile type. Vibratory pile extraction (and if not available, vibratory driving) sound from similar type and sized piles have been measured from other projects and can be used to estimate the noise levels that this project would generate. This analysis uses the practical spreading loss model, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the transmission loss factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5, a standard default value for vibratory pile driving and removal, was used to calculate Level A harassment areas.

Pile extraction will include the removal of existing 12-inch timber piles during Year 1 and Year 2, and the removal of various sizes of steel piles during Year 2. Approximately 543 timber piles would be removed in Year 1 and 376 timber piles in Year 2. Of the timber piles in Year 1, 133 piles are encased in concrete, however, since the concrete wrapping is only present on the upper portion of the pile, these piles are expected to behave as the unwrapped timber piles in regards to generation of underwater noise. Although some piles may be extracted with direct pulling, this analysis assumes that a vibratory pile driver will be used to remove all piles. Up to 18 of the unwrapped piles or 11 of the wrapped piles could be extracted in one work day, but on most days a co-mingling of the two types would likely be removed. Vibratory extraction time needed for each pile could require approximately 6 minutes for each of the unwrapped piles and 9 minutes for each of the concrete wrapped piles (Table 1). An estimated 35 work days will be spent in Year 1 removing timber piles and approximately 27 work days will be spent removing timber piles in Year 2 (Table 1). The most applicable noise values for timber pile removal from which to base estimates for the proposed project are the values used for the Pier 62/63 pile removal in Seattle, Washington (City of Seattle 2017). During vibratory pile extraction associated with this project, the RMS was estimated to be approximately 152 dB at a distance of 10 meters (City of Seattle, 2017) (Table 4).

In Year 2, 34 36-inch steel piles will be extracted. Each 36-inch steel pipe pile may require approximately 45 minutes of vibratory extraction for removal. Up to two of these piles could be removed in a single work day (Table 1). Chevron is planning a total of 18 work days to remove the 36-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored during the CLWMEP in 2019 (AECOM 2020). As pile installation typically produces more sound than vibratory removal, the sound levels during vibratory extraction in this project are expected to be equal to or less than the maximum sound levels recorded during that installation. The maximum measured peak sound value was 196 dB measured at 10 meters, and the highest median RMS value recorded was 167 dB measured at 15 meters (AECOM 2020) (Table 4).

Approximately 40 30-inch steel piles would also be removed in Year 2. Each 30-inch steel pipe pile may require approximately 32 minutes of vibratory extraction for removal. Up to three of these piles could be removed in a single work day (Table 1). Chevron has planned approximately 10 work days to remove the 30-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored at the WETA Downtown Ferry Terminal in San Francisco, CA (Caltrans 2020). The sound levels during vibratory extraction are expected to be equal to or less than the maximum sound levels recorded during that installation. The maximum measured peak sound value was 183 dB measured at 7 meters, and the highest median rms value recorded was 156 dB measured at 7 meters (Caltrans 2020) (Table 4).

In Year 2, approximately 16 24-inch steel piles would be removed. Each 24-inch steel pile may require up to 26 minutes of vibration to remove (Table

1). Chevron has planned approximately 6 work days to remove the 24-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored at the WETA Downtown Ferry Terminal in San Francisco, CA (Caltrans 2020). The sound levels during vibratory extraction are expected to be equal to or less than the maximum sound levels recorded during that installation. For the 24-inch piles, the maximum measured peak sound value was 178 dB measured at 15 meters, and the highest median RMS value recorded was 157 dB measured at 15 meters (Caltrans 2020) (Table 4).

TABLE 4—SOURCE LEVELS FOR VIBRATORY REMOVAL OF PILES FOR YEAR 1 AND YEAR 2

Pile type	Diameter (in)	Source levels/source distance (m)	
		Peak	RMS
Year 1			
Timber	12	NA	152/10
Year 2			
Timber	12	NA	152/10
Steel	36	196/10	167/15
Steel	30	183/7	156/7
Steel	24	178/15	157/15

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources (such as vibratory pile removal), the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it will be expected to incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and source levels used in the spreadsheet are reported in Table 4. The resulting Level A and Level B harassment isopleths as well as area of the Level B harassment isopleths are reported below in Table 5.

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS BY PILE TYPE

Pile type	Hearing group					Level B isopleths (m)	Level B isopleth area (km^2)
	Level A isopleths (m)						
	LF cetaceans	MF cetaceans	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds		
Timber	3	1	4	2	1	1,359	3.81
36″ steel	34	3	50	21	2	20,390	26.93
30″ steel	3	1	5	2	1	1,758	0.93
24″ steel	8	1	12	5	1	4,393	5.14

The maximum distance to the Level A harassment threshold during construction will be during the vibratory removal of the 36 inch steel piles during Year 2 (34 m for gray whales, 3 m for bottlenose dolphins, 50 m for harbor porpoises, 21 m for harbor seals, and 2 m for sea lions). The largest Level B harassment zone extends out to 20,390 m for extraction of the 36 inch steel piles. Area was calculated for each Level B harassment isopleth through a GIS exercise and incorporated into take calculations for California sea lions and harbor porpoises.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. We will also describe how this information is brought together to produce a quantitative take estimate for each species.

Harbor Seals

Limited at-sea densities are available for Pacific harbor seals in San Francisco Bay. To estimate the number of harbor seals potentially exposed to Level B harassment, take estimates were developed based upon annual surveys of haul outs in San Francisco Bay conducted by the National Park Service (NPS) (Codde and Allen 2013, 2015, 2017, 2020; Codde 2020). Harbor seals spend more time hauled out and enter the water later in the evening during molting season (NPS 2014). The molting season occurs from June-July and overlaps with the construction period of June–November, therefore, haul out counts may provide accurate estimates of harbor seals in the area during that time. Due to the close proximity of Castro Rocks to the project area, haul out occupancy of Castro Rocks was selected to determine take estimates. Calculations of take estimates were based upon the highest mean value of harbor seals observed at Castro Rocks during the molting season in any recent NPS annual survey. The highest mean number of harbor seals was recorded in 2019 as 237 seals (Table 6).

Based upon radio and telemetry data in San Francisco Bay, it is expected that harbor seals concentrate within 10 m of Castro Rocks in all directions while foraging (Grigg *et al.,* 2012). Due to the

close proximity of the project area to Castro Rocks, it is expected that include all seals (237) on a given day would swim into the Level B harassment zone during steel pile extraction and half of the seals (119) would swim into the Level B harassment zone during timber pile extraction. Chevron requested a total of 4,165 takes of harbor seals by Level B harassment across the 35 planned work days in Year 1 (Table 7). In Year 2, Chevron requested a total of 11,271 takes of harbor seals by Level B harassment across the 61 planned work days (Table 8).

Chevron will implement shutdown zones based upon the distances to the Level A harassment threshold for each hearing group (Table 5). Therefore, takes of harbor seals by Level A harassment were not requested, nor are takes by Level A harassment authorized by NMFS.

California Sea Lions

Although there are no haul out sites for California sea lions in close proximity to the Wharf, sea lions have consistently been sighted in San Francisco Bay while monitoring during past construction projects (AECOM 2019, 2020; Caltrans 2017). During a long-term monitoring effort for the demolition and reuse of the original east span of the San Francisco Oakland Bay Bridge in the central Bay, 83 California sea lions were observed in the vicinity of the bridge over a 17-year period (2000 to 2017) (Caltrans 2017). In order to calculate the estimated at-sea density of sea lions, the number of sea lions observed over the 17 year period (83 animals) was divided by the number of monitoring days (257 days) to find the number of sea lions observed per day. The total number of sea lions observed per day was then divided by the area of the monitoring zone (2 km^2) to derive an estimated at-sea density of 0.16 animals per square kilometer (Caltrans 2017) (Table 7). In order to calculate daily take estimate for the current Wharf removal project, sea lion density was multiplied by the area of the Level B harassment zone for each pile type (Tables 5). The daily take estimate was then multiplied by the number of work days for that pile type to receive a total take estimate per year (Tables 7, 8). Chevron requested a total of 22 takes of California sea lions by Level B harassment in Year 1, and a total of 542 takes of California sea lions by Level B harassment in Year 2 (Tables 7, 8).

Level A harassment takes of California sea lions were not requested by Chevron, nor are they authorized by NMFS. As Chevron will implement a shutdown zone for all Level A harassment isopleths for each hearing group, Level A harassment takes are not expected.

Harbor Porpoise

The harbor porpoise population has been growing over time in San Francisco Bay (Stern *et al.,* 2017). Although commonly sighted in the vicinity of Angel Island and the Golden Gate, approximately 6 and 12 kilometers (3.7 and 7.5 miles, respectively) southwest of the Wharf, individuals may use other areas of central San Francisco Bay (Keener 2011), as well as the project area.

As in the case of California sea lions, density estimates temporally and spatially aligned with the project work period were available for harbor porpoises based upon long term monitoring for the demolition and reuse of the original east span of the San Francisco Oakland Bay Bridge in the central Bay (Caltrans 2017). During the 257 days of monitoring from 2000–2017, approximately 24 harbor porpoises were observed in the bridge vicinity. The total number of harbor porpoises observed per day was calculated by dividing the total number of harbor porpoises observed by the number of monitoring days. This estimate per day was then divided by the area of the monitoring zone for harbor porpoises (15 km^2) to calculate an at-sea density of harbor porpoises to be 0.17 harbor porpoises/square kilometer. In order to calculate a daily take estimate for the current Wharf removal project, the density of harbor porpoises (0.17) was multiplied by the area of the Level B harassment zone for each pile type (Table 5). To calculate a total take estimate of harbor porpoises per year, the daily estimate was multiplied by the number of anticipated work days for each pile type (Tables 1, 7, 8). Chevron requested a total of 23 takes of harbor porpoises by Level B harassment in Year 1 (Table 8), and a total of 576 takes of harbor porpoises by Level B harassment in Year 2 (Table 9).

Takes of harbor porpoises by Level A harassment are not expected as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS has not authorized Level A harassment takes of harbor porpoises, nor have Level A harassment takes been requested.

Bottlenose Dolphin

Bottlenose dolphins in San Francisco Bay are typically observed west of Treasure Island, near the Golden Gate at the mouth of the Bay, and along the nearshore areas of San Francisco south to Redwood City (Bay Nature Institute 2014; NMFS 2017). The numbers of dolphins in San Francisco Bay have been increasing over the years (Perlman 2017; Szczepaniak *et al.,* 2013). Although dolphins may occur in the Bay year-round, density estimates are limited. Beginning in 2015, two individuals have been observed frequently in the vicinity of Alameda (APER 2019; Perlman 2017). The average reported group size for bottlenose dolphins in this area is five. Assuming a group of five dolphins comes into San Francisco Bay on two week intervals and vibratory pile extraction occurs over 6 two-week periods, 30 takes of bottlenose dolphins would be expected if the group enters the area over which the Level B harassment thresholds may be exceeded (Tables 8, 9). Chevron requested 30 takes of bottlenose dolphins by Level B harassment per year (Tables 8, 9).

Takes of bottlenose dolphins by Level A harassment are not anticipated as Chevron plans to implement a shutdown zone for all Level A harassment isopleths. Takes of bottlenose dolphins by Level A harassment were not requested by Chevron nor are they authorized by NMFS.

Gray Whale

Gray whales are most often sighted in San Francisco Bay during February and March, however, Wharf removal is not planned to occur during this time. Prior monitoring reports of similar projects occurring during the same work windows did not document gray whales in the area (AECOM 2019, 2020). Limited sightings of gray whales in the Bay include strandings, (Bartlett 2022; TMMC 2019), monitoring during work on the RSRB (Winning 2008), and whale watch reports (Bartlett 2022). At-sea densities and regular observational data for gray whales in San Francisco Bay during the planned project time are not available. Therefore, take estimates are based upon the potential for one pair of gray whales to be present in the project area each year. In the event that gray whales are in the project area during the time of construction activities, Chevron requested two takes of gray whales by Level B harassment per year (Tables 8, 9).

Takes of gray whales by Level A harassment are not anticipated as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS has not authorized any takes by Level A harassment of gray whales, nor were any takes by Level A harassment requested.

Northern Elephant Seal

Small numbers of elephant seals may haul out or strand within central San Francisco Bay (Caltrans 2015; Hernández 2020). Previous monitoring, however, has shown northern elephant seal densities to be very low in the area and out of season for the proposed Wharf removal project. Additionally, northern elephant seals were not observed during pile driving monitoring for the CLWMEP from 2018–2020, which was located just south of the proposed project area. However, as northern elephant seals have been sighted in the Bay, and on assumption that an elephant seal enters the Level B harassment zone once every three days during pile extraction, Chevron requested authorization of a total of 12 takes of elephant seals by Level B harassment during Year 1 and 21 takes of elephant seals by Level B harassment during Year 2 (Tables 8, 9).

Takes of elephant seals by Level A harassment are not anticipated as Chevron plans to implement a shutdown zone for all Level A harassment isopleths. Takes of elephant seals by Level A harassment were not requested by Chevron nor are they authorized by NMFS.

Northern Fur Seal

The presence of northern fur seals in San Francisco Bay depends upon oceanic conditions, as more fur seals are likely to strand during El Niño events (TMMC 2016). Equatorial sea surface temperatures of the Pacific Ocean have been below average across most of the Pacific, and La Niña conditions are likely to remain for most of spring 2022. During summer 2022, La Niña conditions are expected to remain or transition into neutral El Niño conditions (NOAA 2022). Since there are no estimated at-sea densities for this species in San Francisco Bay, Chevron conservatively requested, and NMFS authorized, 10 takes of northern fur seals per year by Level B harassment (Tables 8, 9).

Takes of northern fur seals by Level A harassment are not anticipated as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS did not authorize takes of northern fur seals by Level A harassment, nor have takes by Level A harassment been requested.

TABLE 7—ESTIMATED MARINE MAMMAL DENSITIES AND OCCURRENCES

Species	Stock	Estimated density/occurrence	References
Harbor Seals	California	237 per day in June–July (molt season)	(Codde and Allen 2013, 2015, 2017, 2020; Codde 2020).
California Sea Lions	U.S.	0.16 animals/km^2	(Caltrans 2017).
Harbor Porpoise	SF-Russian River	0.17 animals/km^2	(Caltrans 2017).
Bottlenose Dolphin	CA Coastal	Average group size of 5 present in the Bay in two week intervals.	(APER 2019; Perlman 2017).
Gray Whale	Eastern N Pacific	Rare; 2 whales per year	(TMMC 2019; Winning 2008).
Northern Elephant Seal	CA Breeding	Rare; once every 3 days	(Caltrans 2015; Hernández 2020).
Northern Fur Seal	California	Rare; 10 seals per year	(TMMC 2016).

TABLE 8—AUTHORIZED AMOUNT OF MARINE MAMMAL LEVEL B TAKES BY SPECIES AND STOCK, AND PERCENT OF TAKES BY STOCK YEAR 1

Species	Stock	Pile type/size	Requested total take	Percent of stock
Harbor Seals	California *	timber 12″	* 4,165	* 13.4
California Sea Lions	U.S	timber 12″	22	<0.01
Harbor Porpoise	San Francisco-Russian River	timber 12″	23	0.3
Bottlenose Dolphin	CA Coastal	timber 12″	30	6.6
Gray Whale	Eastern North Pacific	timber 12″	2	<0.01
Northern Elephant Seal	California Breeding	timber 12″	12	<0.01
Northern Fur Seal	California	timber 12″	10	0.07

* Assumes multiple repeated takes of the same individuals from a small portion of the stock. Please see the small numbers section for additional information. Abundance estimates are taken from the 2020 U.S. Pacific Marine Mammal Stock Assessments (Carretta et al., 2021).

TABLE 9—AUTHORIZED AMOUNT OF MARINE MAMMAL LEVEL B TAKES BY SPECIES AND STOCK, AND PERCENT OF TAKES BY STOCK YEAR 2

Species	Stock	Pile type/size	Requested total take	Percent of stock
Harbor Seals	California *	timber 12″	3,213	
		steel 36″	4,266	
		steel 30″	2,370	
		steel 24″	1,422	
Total			* 11,271	* 36.4
California Sea Lions	U.S	timber 12″	17	
		steel 36″	485	
		steel 30″	9	
		steel 24″	31	

TABLE 9—AUTHORIZED AMOUNT OF MARINE MAMMAL LEVEL B TAKES BY SPECIES AND STOCK, AND PERCENT OF TAKES BY STOCK YEAR 2—Continued

Species	Stock	Pile type/size	Requested total take	Percent of stock
Total			542	1.3
Harbor Porpoise	San Francisco-Russian River	timber 12″	18	
		steel 36″	515	
		steel 30″	10	
		steel 24″	33	
Total			576	7.4
Bottlenose Dolphin	California Coastal		30	6.6
Gray Whale	Eastern North Pacific		2	<0.01
Northern Elephant Seal	California Breeding		21	0.01
Northern Fur Seal	California		10	0.07

* Assumes multiple repeated takes of the same individuals from a small portion of the stock. Please see the small numbers section for additional information. Abundance estimates are taken from the 2020 U.S. Pacific Marine Mammal Stock Assessments (Carretta et al., 2021).

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

The following mitigation measures are included in Chevron's removal of the Point Orient Wharf:

• *Time restriction:* For all in-water pile removal activities, Chevron shall operate only during daylight hours when visual monitoring of marine mammals can be conducted;

• *Establishment of shutdown zones:* Shutdown zones will be established for each pile type to include the Level A harassment zone for each hearing group. The Level A harassment zone encompasses all of the area where underwater sound pressure levels are expected to reach or exceed the cumulative SEL thresholds for Level A harassment (Table 4). The radii of the shutdown zones will be to the next largest 10 m interval from the values provided in Table 5, with a minimum shutdown zone of 10 m; and

• *Protected Species Observers (PSOs):* Trained PSOs will conduct visual monitoring from clear, elevated vantage points, along the shoreline or construction barges, where the entirety of the shutdown zones can be observed. PSOs will monitor the shutdown zones for 30 minutes prior to any pile extraction activity to be sure marine mammals are not in the zones. Pile extraction will not commence until marine mammals have not been sighted within the shutdown zone for 30 minutes. If a marine mammal is observed entering a shutdown zone during pile extraction, construction activities will stop until the marine mammal leaves the zone, and will not resume until no marine mammals are observed in the shutdown zone for 30 minutes. If a marine mammal is seen above water and dives below, a 15 minute wait period will begin. If the marine mammal is not redetected in that time, it will be assumed that the marine mammal has moved beyond the shutdown zone, and construction activities will continue.

Based on our evaluation of the applicant's mitigation measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which

take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Chevron will monitor the shutdown zones and monitoring zones before, during, and after pile removal activities with at least two PSOs located at the best practicable vantage points. Based upon our requirements, the Marine Mammal Monitoring Plan will implement the following procedures for pile removal:

• PSOs must be independent observers (*i.e.,* not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors, and submit their resumes to NMFS for approval;

• Biological monitoring will occur within one week of the project's start date to establish baseline observation;

• Observation periods will encompass different tide levels at different hours of the day;

• Monitoring will occur from elevated locations along the shoreline or on barges where the entire shutdown zones and monitoring zones are visible. If visibility decreases, such as due to fog or weather, vibratory pile extraction will be stopped until PSOs are able to view the entire shutdown zone;

• PSOs will be equipped with high quality binoculars for monitoring and radios or cells phones for maintaining contact with work crews;

• PSOs will implement clearing of the shutdown and monitoring zones as well as shutdown procedures; and

• At the end of the pile removal day, post-construction monitoring will be conducted for 30 minutes beyond the cessation of pile removal.

Data Collection

Chevron will record detailed information about implementation of shutdowns, counts and behaviors (if possible) of all marine mammal species observed, times of observations, construction activities that occurred, any acoustic and visual disturbances, and weather conditions. PSOs will use approved data forms to record the following information:

• Date and time that permitted construction activity begins and ends;

• Type of pile removal activities that take place;

• Weather parameters (*e.g.,* percent cloud cover, percent glare, visibility, air temperature, tide level, Beaufort sea state);

• Species counts, and, if possible, sex and age classes of any observed marine mammal species;

• Marine mammal behavior patterns, including bearing and direction of travel;

• Any observed behavioral reactions just prior to, during, or after construction activities;

• Location of marine mammal, distance from observer to the marine mammal, and distance from pile removal activities to marine mammals;

• Record of whether an observation required the implementation of mitigation measures, including shutdown procedures and the duration of each shutdown; and

• Any acoustic or visual disturbances that take place.

Reporting Measures

Chevron shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

• Dates and times (begin and end) of all marine mammal monitoring.

• Construction activities occurring during each daily observation period including: (a) How many and what type of piles were removed; and (b) the total duration of time for removal of each pile;

• PSO locations during monitoring; and

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

• Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

• Time of sighting;

• Identification of the animal (s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

• Distance and location of each observed marine mammal relative to pile removal for each sighting;

• Estimated number of animals by species (min/max/best estimate);

• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);

• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching); and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Chevron would immediately cease the specified activities and immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and the West Coast Regional Stranding Coordinator. The report

would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved (if applicable);
- Vessel's speed during and leading up to the incident (if applicable);
- Description of the incident;
- Status of all sound source used in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Chevron to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance. Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

- In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.
- In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Pile removal activities would be permitted to continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 2, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile removal activities have the potential to disturb or displace marine mammals. The project activities may result in take in the form of Level B harassment from underwater sounds generated by vibratory pile removal. Potential takes could occur if individuals move into in the ensonified area when construction activities are underway.

The takes from Level B harassment will be due to potential behavioral disturbance and TTS. No serious injury or mortality is anticipated for any stocks presented in this analysis given the nature of the activity and mitigation measures designed to minimize the possibility of injury. The potential for harassment is minimized through construction method and the implementation of planned mitigation strategies (see Mitigation section).

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal density, small shutdown zones, and planned monitoring also make injury takes of marine mammals unlikely. The shutdown zones will be thoroughly monitored before the vibratory pile removal begins and construction activities will be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals will be detected by trained observers under environmental conditions described for the proposed project. Limiting construction activities to daylight hours will also increase detectability of marine mammal in the area. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance and TTS) as construction activities will occur over the course of 12 weeks and removal of each pile lasts only approximately 6–45 minutes. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* Thorson and Reyff 2006). Individual animals, even if taken multiple times, will likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also

experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. Repeated exposures of individuals to levels of sounds that could cause Level B harassment are unlikely to considerably significantly disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there will be no adverse impacts to the stock as a whole.

As previously described, a UME has been declared for Eastern Pacific gray whales. However, we do not expect takes authorized by this action to exacerbate the ongoing UME. As mentioned previously, no injury or mortality is authorized, and Level B harassment takes of gray whales will be reduced to the level of least practicable adverse impact through incorporation of the proposed mitigation measures. Given that only 2 takes by Level B harassment are authorized for this stock annually, we do not expect the takes to compound the ongoing UME.

The project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated habitat within the project area. While EFH for several fish species does exist in the project area, the activities will not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our final determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment, including injury or serious injury, is anticipated or authorized;
- Anticipated impacts of Level B harassment include temporary behavior modifications or TTS;
- Short duration and intermittent nature of in-water construction activities;
- The specified activity and associated ensonified areas are very small relative to the overall habitat ranges of all species and do not include habitat areas of special significance (Biologically Important Areas or ESA-designated critical habitat);
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity;
- Monitoring reports from similar work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

These factors, in addition to the available body of evidence from prior similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival, and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized in Year 1 is below one-third of the estimated stock abundance for all impacted stocks (Table 8). The number of animals authorized to be taken during Year 1 would be considered small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the overall regional stock and the likelihood that each take would occur to a new individual is low.

The amount of take NMFS has authorized in Year 2 is below one-third of the estimated stock abundance for California sea lions, harbor porpoises, bottlenose dolphins, gray whales, northern elephant seals, and northern fur seals (Table 9). The take percentage of the estimated take of harbor seals is approximately 36.4 percent, however, take estimates are conservative as they assume all takes are of different individuals which is likely not the case. Some individuals may return to the area multiple times a week, but PSOs would count them as separate takes. Furthermore, the project area represents a small portion of the overall range of harbor seals and activities are will most likely to impact only a small portion of the stock. Therefore, since take estimates likely include repeated takes of the same individuals over time, take estimates are expected to represent a smaller percentage of the total stock.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds, specific to both the Year 1 and Year 2 IHAs that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the issuance of an IHA) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we

have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that this action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued two consecutive IHAs to Chevron for the potential harassment of small numbers of the seven marine mammal species incidental to the Point Orient Wharf Removal in San Francisco Bay, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: June 3, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–12395 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

AGENCY: U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held June 27, 2022, 3 p.m. to 5 p.m. Eastern Daylight Time. Written public comments should be received by the Designated Federal Official by June 21, 2022.

ADDRESSES: The meeting will be held virtually. To register for the meeting and/or submit public comments, use this link *https://forms.gle/GyvZMzBmyqxPJ47q9* or email *Laura.Gewain@noaa.gov.* See **SUPPLEMENTARY INFORMATION** for instructions and other information about public participation.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee Website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by Section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The Committee will provide advice on:

(a) administration, operation, management, and maintenance of the Integrated Coastal and Ocean Observation System (the System);

(b) expansion and periodic modernization and upgrade of technology components of the System;

(c) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(d) additional priorities, including—

(1) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(i) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(ii) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(iii) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;

(2) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(3) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(4) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(5) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(6) a multi-region marine sound monitoring system to be—

(i) planned in consultation with the IOOC, NOAA on, the Department of the Navy, and academic research institutions; and

(ii) developed, installed, and operated in coordination with NOAA, the Department of the Navy, and academic research institutions; and

(e) any other purpose identified by the Administrator or the Council.

Matters To Be Considered

The meeting will focus on (1) a briefing on the IOOS Strategic Plan refresh and an opportunity for the committee to provide feedback and (2) updates on the committee work plan. The latest version of the agenda will be posted at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.* The times and the agenda

topics described here are subject to change.

Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by June 21, 2022, to provide sufficient time for Committee review. Written comments received after June 21, 2022, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at *https://forms.gle/GyvZMzBmyqxPJ47q9* or email your comments, your name as it appears on your driver's license, and the organization/company affiliation you represent to Laura Gewain, *Laura.Gewain@noaa.gov.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240–533–9455) or email (*Krisa.Arzayus@noaa.gov*) or to Laura Gewain (*Laura.Gewain@noaa.gov*) by June 13, 2022.

Carl C. Gouldman,

Director, U. S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–12472 Filed 6–8–22; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Occupational Safety and Health Programs for Federal Employees

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice; reopening of comment period.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Safety and Health Requirements Manual (EM 385–1–1) is the gold standard for Safety and Occupational Health regulations. The manual holds a long history dating back to 1941 and is designed to facilitate the standardization of all safety programs. The EM 385–1–1 prescribes the safety and health requirements for all Corps of Engineers activities and operations. The USACE is soliciting comments on the proposed revisions to EM 385–1–1. USACE intends to update the manual and periodically thereafter, to reflect such public input, experience, and innovation. The agency will address significant comments received in the next revision of this manual.

DATES: Consideration will be given to all comments received by August 8, 2022.

ADDRESSES: You may submit comments, identified by docket number COE–2019–0015, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2019–0015. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment we recommend that you include your name and other contact information in the body of your comment and with any compact disc you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: William Eggleston, Headquarters, U.S. Army Corps of Engineers, Safety and Occupational Health Office, in Washington, DC at 202–909–9367.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12196, Occupational Safety and Health Programs for Federal Employees, Executive Order 11988, Floodplain Management, was issued in 1980 and directed agencies heads to (1) Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm; (2) Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary. DoDI 6055.1 was issued in 2014 (incorporated changes in 2018) and the DoD policy applies to all Military Departments to:

1. Protect DoD personnel from accidental death, injury, or occupational illness.

1. Protect DoD personnel from accidental death, injury, or occupational illness.

2. Apply this instruction to all personnel at all operations worldwide with certain limitations.

3. Apply risk management strategies to eliminate occupational injury or illness and loss of mission capability and resources both on and off duty.

4. Use SOH management systems across all military operations and activities, including acquisition, procurement, logistics, and facility management.

5. Apply this instruction to off-duty military personnel, except for OSHA standards

Following issuance of DoD Safety and Occupational Health (SOH) Program DODI 6055.01; the AR–385–10, Army Safety Program implements the requirements of the Occupational Safety and Health Act of 1970 as implemented in E.O. 12196; 29 CFR 1960; DODI 6055.1; DoDI6055.4; and DoDI6055.7. It

provides new policy on Army safety management procedures with special emphasis on responsibilities and organizational concepts. AR 385–10 is applicable to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to Army civilian employees and the U.S. Army.

Following the issuance of the AR–385–10; the EM 385–1–1 U.S. Army Corps of Engineers Safety and Health Requirements Manual prescribes the safety and health requirements for all Corps of Engineers activities and operations. The manual applies to Headquarters, U.S. Army Corps of Engineers (HQUSACE) elements, major subordinate commands, districts, centers, laboratories, and field operating activities (FOA), as well as USACE contracts and those administered on behalf of USACE. Applicability extends to occupational exposure for missions under the command of the Chief of Engineers, whether accomplished by military, civilian, or contractor personnel.

Instructions for Providing Comments

USACE is requesting assistance in the form of data, comments, literature references, or field experiences, to help clarify the policy requirements for implementing Safety and Occupational Health activities for both Corps and contractor personnel. The draft version of the Safety and Health Requirements Manual (EM 385–1–1, April 2022) is available for review on the USACE Publications website: *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll9/id/2559.* While USACE welcomes any and all feedback on this Engineering Manual, detailed responses to the questions provided will be particularly helpful to USACE in clarifying, revising, adding, or deleting information in a particular area/section/chapter. The most useful comments will be derived from on-the-job experiences that are covered within the topics of the manual. Commenters should use their knowledge of working with USACE on various types of federal actions as well as their understanding of consensus standards and other federal Safety and Health regulations.

Future Actions

Feedback and comments provided through this notice will be considered and the draft version of the Safety and Health Requirements Manual (EM 385–1–1, April 2022) will be updated as appropriate. When the manual is finalized and published on the USACE Safety and Occupational Health Office website *https://www.usace.army.mil/Missions/Safety-and-Occupational-Health/,* and the document itself will be made available through the typical U.S. Army publication process.

Dated: June 2, 2022.

Martin C. Jung,

COL, EN, Acting Chief of Staff.

[FR Doc. 2022–12422 Filed 6–8–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4784–106]

Topsham Hydro Partners Limited Partnership (L.P.); Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Pejepscot Hydroelectric Project, located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin Counties in the village of Pejepscot and the town of Topsham, Maine and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/Quick Comment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–4784–106.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: June 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–12440 Filed 6–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–72–000.

Applicants: NorthWestern Corporation.

Description: Application for Authorization Under Section 203 of the Federal Power Act of NorthWestern Corporation.

Filed Date: 6/2/22.

Accession Number: 20220602–5177.

Comment Date: 5 p.m. ET 6/23/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–135–000.
Applicants: Pisgah Ridge Solar LLC.
Description: Pisgah Ridge Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 6/3/22.
Accession Number: 20220603–5039.
Comment Date: 5 p.m. ET 6/24/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1852–065; ER10–2641–041.
Applicants: Oleander Power Project, Limited Partnership, Florida Power & Light Company.
Description: Supplement to April 29, 2022 Notice of Change in Status of Florida Power & Light Company, et al.
Filed Date: 5/20/22.
Accession Number: 20220520–5182.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: ER22–834–003.
Applicants: PacifiCorp.
Description: Compliance filing: OATT Revised LGIP & SGIP Compliance Filing 6/3/2022 to be effective 4/1/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5154.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–1503–000; ER22–1505–000.
Applicants: WEB Silver Maple Wind, LLC, Pisgah Mountain, LLC.
Description: Amendment to March 30, 2022 Pisgah Mountain, LLC, et al. tariff filing.
Filed Date: 5/26/22.
Accession Number: 20220526–5182.
Comment Date: 5 p.m. ET 6/16/22.

Docket Numbers: ER22–1579–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2022–06–02_Amendment to Electric Storage Resources Pre-Implementation Filing to be effective 6/6/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5165.
Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2020–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 205: Joint NYISO NMPC Second Amended Restated SGIA 2591—SunEast Watkins Road to be effective 5/19/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5061.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2021–000.
Applicants: ISO New England Inc., The United Illuminating Company.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: PTO AC; Rev to Att F to Correct Minor Errors & Update Name of PTO Versant Power to be effective 8/2/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5084.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2022–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: CCSF Revisions to Appendix G (SA 275) to be effective 7/12/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5089.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2023–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Macon County Solar (Hybrid Project) LGIA Filing to be effective 5/22/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5092.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2024–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF–FPL Rate Schedule No. 364 Export Agreement Concurrence to be effective 7/20/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5109.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2025–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LA, Tule Hydropower Project WDT1794 (SA1179) to be effective 5/23/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5131.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2026–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA, Sch. 12 and RAA, Sch. 17 re: 1st Quarter 2022 Member Lists to be effective 3/31/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5140.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2027–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: Operations Agreement with KPCo to be effective 12/31/9998.
Filed Date: 6/3/22.
Accession Number: 20220603–5147.
Comment Date: 5 p.m. ET 6/24/22.

Docket Numbers: ER22–2028–000.
Applicants: SR Hazlehurst, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 8/3/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5152.
Comment Date: 5 p.m. ET 6/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–12439 Filed 6–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–968–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rates—Ridgewood and ILX Mormont to be effective 6/1/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5000.
Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: RP22–969–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Vitol 860537 eff 6–1–22 to be effective 6/1/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5001.
Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: RP22–970–000.

Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 6–2–22 to be effective 6/1/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5036.
Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: RP22–971–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—911051 & 911252 Amended to be effective 6/1/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5056.
Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: RP22–972–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Chevron to DTE Energy to be effective 5/28/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5104.
Comment Date: 5 p.m. ET 6/14/22.

Docket Numbers: RP22–973–000.
Applicants: MountainWest Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing—Sec. 27 to be effective 6/1/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5035.
Comment Date: 5 p.m. ET 6/15/22.

Docket Numbers: RP22–974–000.
Applicants: MountainWest Pipeline, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing—Sec. 26 to be effective 6/1/2022.
Filed Date: 6/3/22.
Accession Number: 20220603–5036.
Comment Date: 5 p.m. ET 6/15/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–12438 Filed 6–8–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0375, FRL–9841–01–OLEM]

Recycling Education and Outreach; Grant Program and Model Recycling Program Toolkit; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Information (RFI).

SUMMARY: EPA is developing and implementing several new programs as directed by the 2021 Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law. This action provides the public with the opportunity to share information to inform the development of both the Consumer Recycling Education and Outreach grant program and the Model Recycling Program Toolkit. The education and outreach grants will fund programs to improve the effectiveness of residential and community recycling programs, including those that tackle waste prevention, through public education and outreach. The Model Recycling Program Toolkit is for state, local, and tribal governments to use in carrying out their programs. The Office of Resource Conservation and Recovery (ORCR) within the EPA is seeking information about effective strategies to reach consumers and encourage them to engage in activities that reduce the generation of waste, improve effective recycling, and reduce contamination in the recycling stream. Information from a wide range of stakeholders involved in the recycling system is encouraged, including but not limited to industry, researchers, academia, state, tribal, and local governments including U.S. territories and the District of Columbia, other federal agencies, community groups, non-governmental organizations, the public and international organizations.

DATES: Written comments and information must be received on or before July 25, 2022. Information about these feedback sessions also will be included in EPA's Sustainable Materials Management Newsletter. To subscribe go to *https://www.epa.gov/recycling strategy/forms/stay-connected.*

ADDRESSES: EPA invites submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0375.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OLEM–2022–0375 for this notice. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Mya Sjogren, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 5306T, Washington, DC 20460; Telephone: (202) 566–0253; Email: *RecyclingEd@epa.gov.* For more information on this action please visit *https://www.epa.gov/rcra/infrastructure.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this RFI is voluntary. Responses to this RFI may be submitted by a single party or by a team. Respondents should respond to this RFI in a Microsoft Word (.docx) file or Adobe PDF (.pdf) file. This document should contain the following:

- Two clearly delineated sections: (1) Cover page with company name and

contact information; and (2) responses should indicate which topic and specific questions are being addressed.

- 1-inch margins (top, bottom, and sides).
- Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No confidential and/or business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. *Privacy Note:* All comments received from members of the public will be available for public viewing on *Regulations.gov*. In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the federal government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

II. General Information

A. What is the purpose of this RFI?

Under the Infrastructure Investment and Jobs Act (Pub. L. 117–58), also known as the Bipartisan Infrastructure Law, EPA is directed to develop several new solid waste recycling programs. This RFI covers the following activities established by the law:

- Establishing a grant program to fund improvements to the effectiveness of residential and community recycling programs, including those that tackle waste prevention, through public education and outreach.
- Developing a model recycling program toolkit to assist states, tribes, and local governments to inform the public about residential waste prevention (*e.g.,* source reduction, reuse, refurbishment, repair, composting) and residential or community recycling programs to improve collection rates and decrease contamination.

This RFI seeks information from a broad array of stakeholders such as industry, researchers, academia, state, territories, local, and tribal governments, other federal agencies, community groups, non-governmental organizations, the public, international organizations, and all other stakeholders involved in education and outreach to consumers and communities on waste prevention, recycling, and composting. EPA is seeking information about effective strategies to reach consumers and encourage them to engage in activities that reduce the generation of waste, improve effective recycling, and reduce contamination in the recycling stream.

This RFI is part of a series of RFIs EPA will be issuing to inform the development of new programs under the Bipartisan Infrastructure Law. Other RFIs that are related include those on the *Solid Waste Infrastructure for Recycling Grant Program* and the *Development of Best Practices for Collection of Batteries to be Recycled and Voluntary Battery Labeling Guidelines.*

III. Background

In 2018, approximately 292 million tons of municipal solid waste (MSW) were generated in the United States, of which approximately 69 million tons were mechanically recycled and 25 million tons were composted. Together, 32.1 percent of MSW (about 94 million tons) was mechanically recycled or composted, preventing over 193 million metric tons of carbon dioxide equivalent from entering the atmosphere (U.S. EPA, 2020a). The National Recycling Strategy (*https://www.epa.gov/recyclingstrategy*), which is part one of a series on building a circular economy for all, is focused on enhancing and advancing the national municipal solid waste recycling system. The U.S. MSW recycling system currently faces several challenges, including confusion about what materials can be recycled and how the contamination of recycled materials results in those materials being sent to landfills. Environmental benefits of advancing the U.S. recycling system include decreasing pollution and conserving energy. Preventing waste and increasing recycling reduces climate, environmental, and social impacts (pollution, health, economics) of materials use, and keeps valuable resources in use instead of in landfills.

The Bipartisan Infrastructure Law provides $15 million per year for five years in funding for ORCR to administer the Consumer Recycling Education and Outreach grant program. The funding provided through Bipartisan Infrastructure Law is a critical opportunity for ORCR to fund a range of high-impact projects to increase recycling, reduce contamination in the recycling stream, and promote a circular economy for sustainable materials management by informing the public about residential or community recycling programs, providing information and guidance about the materials that are accepted as part of these recycling programs and overall increase collection rates and decrease contamination in the recycling stream.

Eligible entities include a state; a unit of local government; an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)); a Native Hawaiian organization (as defined in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517)); the Department of Hawaiian Home Lands; the Office of Hawaiian Affairs; a nonprofit organization; or a public-private partnership.

Materials within the scope of this request include commonly recycled and reused materials, such as aluminum, glass, paper and plastics, as well as food, organics (yard waste, tree trimmings, wood, etc.), textiles, electronics and construction and demolition materials. Biosolids, hazardous waste and industrial wastes such as coal combustion residuals or slag are not within the scope of this request. Landfilling and incineration or combustion are not considered recycling and are not within the scope of this request.

Grant funds may be used for activities including public service announcements; door-to-door education and outreach campaigns; social media and digital outreach; an advertising campaign on recycling awareness; the development and dissemination of specific toolkits for a municipal and commercial recycling program, information on the importance of quality in the recycling stream and the economic and environmental benefits of recycling; and information on what happens to materials after the materials are placed into a residential or community recycling program; businesses recycling outreach; bin, cart, and other receptacle labeling and signs; and other education and outreach activities that are appropriate to improve recycling and reduce contamination, such as reducing waste and reusing, repairing, and refurbishing materials before they enter the recycling system.

In addition to the grants, the Bipartisan Infrastructure Law requires the development of a toolkit, which will, at a minimum, include the following information; a standardized set of terms and examples to describe materials that are accepted by a residential recycling program; information that can be widely applied across residential recycling programs; best practices for the collection and processing of recycled materials; a community self-assessment guide to identify gaps in existing recycling programs; training modules that enable States and nonprofit organizations to

provide technical assistance to units of local government; access to consumer educational materials that states, tribes, and units of local government can adapt and use in recycling programs; a guide to measure the outcomes or effectiveness of a grant received under the Education and Outreach grant program, including standardized measurements for recycling rates and decreases in contamination in the recycling stream.

EPA will not consider responses to this RFI to be proposals for financial assistance projects or unsolicited requests for financial assistance. Do not include confidential business information or other privileged material in responses. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation. Information gathered through this RFI may be used to inform potential strategies for supporting and improving state, territorial, tribal, and local recycling operations. ORCR welcomes comments from all stakeholders.

IV. Request for Information

Over the course of 2022, ORCR will be hosting virtual meetings across the country with interested stakeholders to inform the development of the new programs established by the Bipartisan Infrastructure Law. This RFI and the other RFIs aim to supplement those planned consultations and provide all interested individuals and organizations with the opportunity to share their perspectives on barriers and opportunities related to consumer recycling education and outreach to improve waste prevention, increase recycling and reduce contamination in the recycling stream. Specifically, when thinking about consumer recycling education and outreach of post-consumer materials management, include the recovery, reuse, recycle, repair, and/or refurbishment of MSW and construction and demolition materials, and composting.

ORCR is seeking examples of evaluations and evidence-based messaging and strategies associated with effective communication campaigns. ORCR is interested in perspectives on the following topics to inform the Recycling Education and Outreach Program Grant Program and the Model Recycling Program Toolkit:

- *Standardized Terminology:* What are some of the standardized terms and examples that may be used to describe materials that are accepted by a residential recycling program?
- *Information on Residential Recycling:* What are other kinds of standardized information that can be applied across residential recycling program, taking into consideration the differences in recycled materials that are accepted by residential recycling programs.
- *Education and Outreach Best Practices:* EPA is creating a toolkit to help communities with their education and outreach related to recycling.
  - Do you have examples of education and outreach programs, materials or approaches to improve recycling, source reduction, recycling, recovering, reusing, repairing, or refurbishing that are associated with demonstrated results?
  - Can you direct us to any specific examples of useful consumer educational materials or other content that states, tribes, and units of local government can adapt and use in recycling programs? What were the associated impacts and costs (financial, staff, and/or other resources) of the effective programs?
  - For communities without recycling programs, with low recycling rates, or high contamination rates in the recycling stream (*i.e.,* plastic bags), what specific education and outreach efforts would assist communities? What kinds of technical assistance from EPA (*i.e.,* webinars, tools, strategies, case studies, community-based messaging, toolkit implementation) would help these communities?
  - What are some model programs with evidence in raising awareness of available source reduction options to residents for materials, such as food waste, yard waste, textiles, plastics, etc.
- *Training Modules:* Do you have examples of training modules that will enable States and nonprofit organizations to provide technical assistance to units of local government?
- *Consumer Education Materials:* Do you have examples of consumer educational materials that States, Tribes, and units of local government can adapt and use in recycling programs?
- *Grant Effectiveness:* Do you have examples of how to measure the effectiveness of a recycling grant program, including standardized measures for recycling rates and contamination rates?
- *Measuring Effective Communication:* What types of messaging and communication channels (PSAs, door-to-door campaigns, social media, posters, etc.) have resulted in significant program improvements to waste diversion, recycling, or composting? Improvements might include increases in community recycling or composting rates, decreases in recycling or composting stream contamination, increases in the number of people participating in the recycling program overall or in a particular demographic, for example. Additionally, please provide examples, where possible, of program evaluations and/or evidence-based messaging results in carrying out effective communication campaigns.
- *Identifying Local Conditions:* What barriers exist for consumers to reduce, recycle, recover, reuse, repair, or refurbish in your state, territory, tribe, local government, or community? What resources are needed to overcome those barriers? What motivators have been identified for consumers to reduce, recycle, recover, reuse, repair, or refurbish in your state, territory, tribe, local government, or community?
- *Costs and Workplans:* What are some examples of outreach and education programs or studies, and associated estimated costs, that have demonstrated results in improving a recycling program in a community? What is the cost of an effective one-year education and outreach behavior change campaign for your state, territory, tribe, local government, or community? Do your recycling programs or initiatives target any specific materials, and if so, why?
- *Identifying Community Needs for Improvement:* For communities without recycling programs, with low recycling rates, or high contamination rates in the recycling stream, what specific education and outreach efforts would assist communities? What kinds of technical assistance from EPA (*i.e.,* webinars, tools, strategies, case studies, community-based messaging, toolkit implementation) would help these communities?
- *Formative Evaluation, Pre- and Post-testing, Piloting:* What are examples of recycling education and outreach campaigns that have conducted formative research, pre- and post-testing, or piloting a new initiative with an associated evaluation? What skills or knowledge were needed to effectively conduct the formative evaluation and/or pre- and post-testing? What could EPA provide in its Model Recycling Program Toolkit to help communities evaluate their pilots or projects?
- *Serving Specific Communities:* What are examples of initiatives or efforts around source reduction, recovery, reuse, repair, refurbish, or recycling, that focus on supporting overburdened and underserved communities, rural communities, communities with environmental justice concerns, and/or Tribes and territories? How are those programs addressing

overburdened and underserved communities? What additional actions or investment have overburdened and underserved communities expressed a need for?

• *Current Stakeholder Education and Outreach Programs:* Does your community currently have an outreach and education program to support and encourage recycling? If so, what are the elements of the program and how is it funded? If you have a program, how do you continue to engage the community beyond when the program has been implemented?

• *Other Feedback:* What suggestions should EPA consider while developing the Recycling Education and Outreach grant program and Model Recycling Program Toolkit? Based on the legislative language,[1] are there projects that you believe would be eligible in the Education and Outreach grant program, but have not been mentioned?

V. Disclaimer and Important Note

This RFI is issued solely for information, research and planning purposes and does not constitute a Request for Proposals (RFP) or a Request for Applications (RFA). Any information obtained as a result of this RFI is intended to be used by EPA on a non-attribution basis to support EPA's efforts to develop the Recycling Education and Outreach—Grant Program and Model Recycling Program Toolkit. This RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. EPA will review and consider all responses in its development of the grant program and toolkit that are the subject of this request. This RFI does not represent any award commitment on the part of EPA, nor does it obligate EPA to pay for costs incurred in the preparation and submission of any responses.

Dated: June 3, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–12458 Filed 6–8–22; 8:45 am]

BILLING CODE 6560–50–P

[1] H.R. 3684—Infrastructure Investment and Jobs Act. Section 70402. Consumer Recycling Education and Outreach Grant Program. *www.congress.gov/bill/117th-congress/house-bill/3684/text.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0342, FRL–9840–01–OLEM]

Solid Waste Infrastructure for Recycling Program; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Information (RFI).

SUMMARY: EPA's Office of Land and Emergency Management (OLEM) is developing and implementing several new programs as directed by the 2021 Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law. This action provides the public with the opportunity to share information to inform the development of the Solid Waste Infrastructure for Recycling (SWIFR) grant program, which will fund improvements to local post-consumer materials management including municipal recycling programs and assist local waste management authorities in making improvements to local waste management systems. OLEM is seeking information from a broad array of stakeholders about needed improvements to solid waste management systems (*e.g.,* waste reduction, collection, sorting, processing, and end-markets for reuse and recycling), including but not limited to industry, researchers, academia, state, tribal, and local governments including U.S. territories and the District of Columbia, other federal agencies, community groups, non-governmental organizations, the public, and international organizations.

DATES: Comments and information must be received on or before July 25, 2022.

ADDRESSES: Responses to this Request for Information (RFI) may be submitted by a single individual or by a group. Comments submitted in response to this notice may be submitted through one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Instructions: All submissions received must include the Docket ID No. OLEM–2022–0340 for this RFI. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the Request for Information process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Dan Halpert, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management, Mail Code 5306T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004; Telephone: (202) 566–0816; Email: *SWIFR@epa.gov.* For more information on this action please visit *https://www.epa.gov/rcra/infrastructure.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this RFI is voluntary. Responses to this RFI may be submitted by a single party or by a team. Respondents should respond to this RFI in a Microsoft Word (.docx) file or Adobe PDF (.pdf) file. This document should contain the following:

• Two clearly delineated sections: (1) Cover page with company name and contact information; and (2) responses should indicate which topic and specific questions are being addressed.

• 1-inch margins (top, bottom, and sides).

• Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No confidential and/or business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this

RFI. *Privacy Note:* All comments received from members of the public will be available for public viewing on *Regulations.gov*. In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

II. General Information

A. What is the purpose of this RFI?

Under the Infrastructure Investment and Jobs Act (IIJA; Pub. L. 117–58), also known as the Bipartisan Infrastructure Law, EPA is directed to develop several new solid waste recycling programs. This RFI covers the following activities established by the BIL:

- Support the implementation of a strategy to improve post-consumer materials management and infrastructure;
- Support improvements to local post-consumer materials management, including recycling programs; and
- Assist local waste management authorities in making improvements to local solid waste management systems.

The term post-consumer materials management refers to the systems, operation, supervision and long-term management of processes and equipment used for post-use material (including packaging, goods, products, and other materials), including collection; transport; and systems and processes related to post-use materials that can be recovered, reused, recycled, repaired, or refurbished.

This RFI seeks information from a broad array of stakeholders such as industry, researchers, academia, state, territories, local and tribal governments, other federal agencies, community groups, non-governmental organizations, international organizations, the public, and all other stakeholders involved in the recycling system from the collection and sorting to the reuse and recycling. OLEM is seeking information about needed improvements to post-consumer materials management (*e.g.,* waste reduction, collection, sorting, processing, and end-markets for reuse and recycling). This stakeholder input will inform the Agency's efforts to develop effective grant programs that improve recycling infrastructure across the nation.

This RFI is part of a series of RFIs EPA will be issuing to inform the development of new programs under the Bipartisan Infrastructure Law. Other RFIs that are related include those on the *Recycling Education and Outreach—Grant Program and Model Recycling Program Toolkit* and the *Development of Best Practices for Collection of Batteries to be Recycled and Voluntary Battery Labeling Guidelines.*

III. Background

Approximately half of global greenhouse gas emissions are the result of natural resource extraction and processing.[1] Increasing recycling reduces climate, environmental, and social impacts of materials use, and keeps valuable resources in use instead of in landfills. Some communities that lack waste management infrastructure do not have curbside waste collection services, recycling, or composting programs, which increases the burden on our landfills, decreases their capacity, and increases greenhouse gas emissions. Mismanaged waste also can compound social and economic conditions in historically underserved and overburdened communities. Resources and commodities disposed of in landfills amount to a financial loss for recycling businesses and industries nationwide.

Section 302(a) of the Save Our Seas 2.0 Act (Pub. L. 116–224) authorized EPA to create a grant program to support post-consumer materials management and recycling efforts, now known as the SWIFR program. The IIJA was the first legislation to fund EPA's SWIFR program providing EPA with $275,000,000 to award grants, in increments of $55 million per year from fiscal years 2022–2026, to remain available until expended. Grants issued under SWIFR will support implementation of a strategy to improve post-consumer materials management and infrastructure; improvements to local post-consumer materials management and recycling programs; and assist local waste management authorities in making improvements to local solid waste management systems.

EPA seeks input through this RFI to guide the program design to ensure that the SWIFR program meets the actual needs for improving materials management. Materials within the scope of this request include commonly recycled and reused materials, such as aluminum, glass, paper and plastics, as well as food, organics (yard waste, tree trimmings, wood, etc.), textiles, electronics and construction and demolition materials. Biosolids, hazardous waste and industrial wastes such as coal combustion residuals or slag are not within the scope of this request. Landfilling, incineration/combustion, and energy recovery technologies are not within the scope of this request.

EPA will not consider responses to this RFI to be proposals for financial assistance projects or unsolicited requests for financial assistance. Do not include confidential business information (CBI) or other privileged material in responses. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation. Information gathered through this RFI may be used to inform potential strategies for supporting and improving state, territorial, tribal, and local recycling operations. ORCR welcomes comments from all stakeholders.

IV. Request for Information

Over the course of Spring 2022, ORCR will be hosting virtual meetings across the country with interested stakeholders to inform the development of the new programs established by the IIJA. This RFI and future RFIs aim to supplement those planned consultations and provide all interested individuals and organizations with the opportunity to share their perspectives on barriers and opportunities related to solid waste management infrastructure. SWIFR provides EPA with authority to award grants to states, the District of Columbia, territories (the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), tribes and intertribal consortia, certain former reservations in Oklahoma, and Alaskan Native Villages and political subdivisions (*e.g.,* local governments) for improvements to local post-consumer materials management including municipal recycling programs and to assist local waste management authorities in making improvements to local waste management systems.

Specifically, when responding to the questions below about solid waste or post-consumer materials management, consider in your response the recovery, reuse, recycle, repair, and/or refurbishment of municipal solid waste, as well as construction and demolition materials. This includes source reduction and reuse, sending materials to material recovery facilities, composting, industrial uses (*e.g.,* rendering and anaerobic digestion), and feeding animals. OLEM is interested in perspectives on the following topics:

- What are the barriers and challenges facing states, territories,

[1] International Resource Panel (2019). Global Resources Outlook 2019: Natural Resources for the Future We Want. Report of the International Resource Panel. United Nations Environment Programme. Nairobi, Kenya.

tribes, local governments and communities with regard to post-consumer materials management and how can SWIFR grants assist in overcoming those barriers?

- EPA is considering a wide range of eligible uses for SWIFR funds including planning, facility-specific feasibility studies, infrastructure improvements such as equipment upgrades, and new construction. Are there other activities that EPA should consider for funding eligibility when completing the design of the SWIFR grant program? For other activity recommendations, please provide associated estimated costs.
- What are some examples of post-consumer materials management projects, studies or initiatives, and associated estimated costs, that would support disadvantaged communities, rural communities, communities with environmental justice concerns, and tribes and territories?
- Are there negative impacts from post-consumer materials management facilities on communities? How could grant funds be used to eliminate or minimize those negative impacts? For any projects, studies, or initiatives referenced in response to this RFI, please also provide associated estimated costs.
- Are there specific recommendations that EPA should be considering to improve post-consumer materials management, such as:
  - Investments needed for state, territorial, tribal, and local waste management programs;
  - Examples of equipment and tangible infrastructure, technology, or other improvements needed to increase access and/or increase recovery of materials;
  - Recommendations on how to create greater system wide consistency on managing post-consumer materials;
  - Examples of projects, studies, or initiatives, and associated estimated costs, to increase access for communities without robust post-consumer materials management programs;
  - Examples of projects, studies, or initiatives, and associated estimated costs, to implement innovative approaches to improve post-consumer materials management;
  - Programs or projects that will support local, state or regional markets for material; and
  - State and local data needs to improve measurement of materials and how they are managed.
- Should EPA consider a phased approach to grant distribution to allow multi-year financing options? If so, please provide detailed recommendations on the phases EPA should consider.
- Should EPA consider allocating the funds to allow for a greater number of smaller grants to assist with discreet projects and planning, or a smaller number of larger grants to support a more complex investment?
- Do you have any additional information that might be considered by EPA in developing future programs to improve post-consumer materials management programs infrastructure?

V. Disclaimer and Important Note

This request for information is issued solely for information, research and planning purposes and does not constitute a Request for Proposals (RFP) or a Request for Applications (RFA). Responding to this RFI will not give any advantage to or preclude any organization or individual in any subsequently issued solicitation, RFP, or RFA. Any future development activities related to this activity will be announced separately on *https://www.sam.gov* and/or *https://www.grants.gov*. This RFI does not represent any award commitment on the part of the U.S. Government, nor does it obligate the Government to pay for costs incurred in the preparation and submission of any responses.

Dated: June 3, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–12457 Filed 6–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0340, FRL–9842–01–OLEM]

Development of Best Practices for Collection of Batteries To Be Recycled and Voluntary Battery Labeling Guidelines; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Information (RFI).

SUMMARY: EPA is developing best practices with respect to the collection of batteries to be recycled, as well as establishing a program to promote battery recycling through the development of voluntary labeling guidelines for batteries and communication materials for battery producers and consumers as directed by the Infrastructure Investment and Jobs Act of 2021. To aid in the implementation of these directives, the Office of Resource Conservation and Recovery (ORCR) within the Environmental Protection Agency (EPA) requests information on the end-of-life management of batteries, including information on their generation, collection, recycling, reuse, as well as the current labeling standards/requirements for batteries regarding their end-of-life. EPA is interested in both single-use batteries, also known as primary batteries, and rechargeable batteries, also known as secondary batteries. This includes lithium based, nickel-metal hydride, and other battery chemistries, as well as all battery types, such as small consumer batteries, large format batteries (including electric vehicles and grid energy storage), and industrial batteries used in manufacturing, commercial businesses, and healthcare operations. ORCR is also seeking information about how consumers, businesses, entities in the vehicle management chain (dealerships, repair shops, auction houses, dismantlers, entities that repurpose electric vehicle batteries, refurbishers, and scrap yards), and others are educated on how to manage batteries at the end-of-life. Information from a wide range of stakeholders involved in the battery lifecycle from its manufacture to its end-of-life management, including but not limited to industry stakeholders, researchers, academia, state, tribal, and local governments including U.S. territories and the District of Columbia, other federal agencies, community groups, non-governmental organizations, the public, and international organizations.

DATES: Written comments and information must be received on or before July 11, 2022. EPA will also hold feedback sessions with an opportunity to provide live, verbal feedback. The dates and times for those feedback sessions will be posted on: *https://www.epa.gov/rcra/feedback-sessions-bipartisan-infrastructure-law-solid-waste-and-recycling-programs.* To stay connected about these feedback sessions subscribe to: *https://www.epa.gov/recyclingstrategy/forms/stay-connected.*

ADDRESSES: EPA invites submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0340.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30

a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OLEM–2022–0340 for this notice. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Rita Chow, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 5306T, Washington, DC 20460; telephone number: (202) 566–0227; email address: *Batteries@epa.gov.* For more information on this action please visit *https://www.epa.gov/rcra/infrastructure.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this RFI is voluntary. Responses to this RFI may be submitted by a single party or by a team. Respondents should respond to this RFI in a Microsoft Word (.docx) file or Adobe PDF (.pdf) file. This document should contain the following:

- Two clearly delineated sections: (1) Cover page with company name and contact information; and (2) responses should indicate which topic and specific questions are being addressed.
- 1-inch margins (top, bottom, and sides).
- Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No confidential and/or business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. *Privacy Note:* All comments received from members of the public will be available for public viewing on *Regulations.gov.* In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

II. General Information

A. What is the purpose of this RFI?

Under the Infrastructure Investment and Jobs Act (Pub. L. 117–58), also known as the Bipartisan Infrastructure Law, EPA is directed to develop several new solid waste recycling programs. This RFI covers the following programs established by the Bipartisan Infrastructure Law:

- The development of best practices that may be implemented by state, tribal, and local governments with respect to the collection of batteries to be recycled that is—technically and economically feasible; environmentally sound and safe for waste management workers; and optimize the value and use of material derived from recycling of batteries; and
- The establishment of a program to promote battery recycling through the development of voluntary labeling guidelines for batteries and other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. The purpose of the program is to improve battery collection and reduce battery waste by—identifying battery collection locations and increasing accessibility to those locations; promoting consumer education about battery collection and recycling; and reducing safety concerns relating to the improper disposal of batteries. EPA is also interested in the creation of labeling guidelines as a helpful tool in providing information to battery manufacturers about the recyclability of their products. EPA is interested in how the voluntary labeling guidelines might apply to small format, large format, and industrial batteries.

This RFI seeks information on both single-use batteries, also known as primary batteries, and rechargeable batteries, also known as secondary batteries; all battery chemistries, including but not limited to: lithium based, nickel-metal hydride, and other battery chemistries; and all battery types, such as small consumer batteries, large format batteries (including electric vehicles and grid energy storage), and industrial batteries used in manufacturing, commercial businesses, and healthcare operations, to inform the scope of the battery collection best practices, voluntary labeling guidelines for batteries, and other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. This RFI seeks input from all stakeholders involved in the battery lifecycle from its manufacture to its end-of-life management—including but not limited to the public, industry, researchers, academia, state, tribal, and local governments, including U.S. territories and the District of Columbia, other federal agencies, community groups, non-governmental organizations, and international organizations. In addition to stakeholders involved with small consumer batteries, EPA also is interested in obtaining input from stakeholders involved with large format batteries (including electric vehicles and grid energy storage), and industrial batteries used in manufacturing, commercial businesses, and healthcare operations. This stakeholder input will inform the Agency's efforts to develop best practices with respect to the collection of batteries to be recycled, as well as to establish a program to promote battery recycling through the development of voluntary labeling guidelines for batteries and other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries.

This RFI is part of a series of RFIs EPA will be issuing to inform the development of new programs under the Bipartisan Infrastructure Law. Other RFIs that are related include those on the *Solid Waste Infrastructure for Recycling Grant Program* and the *Recycling Education and Outreach—Grant Program and Model Recycling Program Toolkit.* In addition, the U.S. Department of Energy will be issuing future information requests to advise their work to support battery recycling under the Bipartisan Infrastructure Law, which includes several grant programs to support battery collection, safe storage and transportation, recycling, and second-use.

III. Background

Critical materials, such as lithium, are key resources needed to manufacture products for the clean energy economy, including wind turbines, solar panels, and electric vehicles. However, supply

chain disruptions associated with these valuable resources introduce uncertainty and instability in the production of these essential technologies. For example, reliable supplies of lithium and cobalt are needed to manufacture lithium-ion batteries which are used for electric vehicles and grid energy storage.

In 2019, the U.S. Department of Commerce issued a *Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals,*[1] which included an action to improve understanding of domestic critical mineral resources, including secondary sources. In February 2021, President Biden signed Executive Order 14017, Executive Order on America's Supply Chains,[2] to improve supply chain security for the U.S. Government and U.S. companies. In June 2021, the White House released its *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth*[3] report, which included a recommendation to build a foundation for accelerated growth in strategic and critical material recycling and recovery. The Bipartisan Infrastructure Law investments for both EPA and DOE in battery collection and recycling will help the nation strengthen and build more resilient supply chains.

Batteries are important sources of critical minerals.[4] Depending on the battery chemistry, critical minerals used in the manufacture of batteries include antimony, cobalt, graphite, lithium, manganese, and nickel. Batteries power many of the consumer devices, electronics and vehicles used in people's daily lives from household appliances to laptops, cell phones, wireless headphones, cameras, handheld gaming devices, cordless power tools, toys, flashlights, and other portable devices. Given the usefulness of batteries in these applications, especially lithium-ion batteries for electric vehicles, bikes, scooters, and grid energy storage, the demand for these batteries are expected to continue rising at an exponential rate.[5] In the future, up to 40% of critical materials in batteries may be supplied from recycled batteries according to the U.S. Department of Energy (DOE).[6] Thus, there is a great opportunity to increase the recovery of critical materials by improving end-of-life management and recycling of batteries.

Batteries are also important in the nation's efforts to tackle climate change. First, batteries are essential to powering the nation's economy with clean, affordable, and resilient energy and transportation options. Economical and fast-charging batteries are important to spurring adoption of all-electric and plugin-hybrid vehicles, while high-energy-density battery storage is needed for solar and wind power. Second, recycling batteries can also reduce environmental impacts associated with their life cycle. Recycling batteries helps prevent valuable materials from going into the waste stream, reduce greenhouse gases that would be generated and energy needed to manufacture new batteries, and reduce the extraction of valuable and limited virgin resources.

Batteries can also pose a hazard if managed incorrectly. Once the device is broken or the batteries lose their charge, they can end up in the regular waste or curbside recycling bins, which can result in dangerous situations. Batteries can start fires throughout the municipal waste management system, in transportation and at transfer facilities, to materials recycling facilities, scrap yards, and landfills, causing air pollution issues in already overburdened communities and threatening worker and first responder safety. In addition to the fire danger, when discarded improperly, such as in household trash or curbside recycling, critical materials inside batteries are lost and cannot be recycled into new batteries.

The Bipartisan Infrastructure Law makes significant investments to address batteries in a holistic manner from producing critical minerals, sourcing materials for manufacturing, and even recycling critical materials without new extraction/mining. For DOE, it provided more than $7 billion investment in the supply chain for batteries, including investments in the end-of-life infrastructure for batteries from the collection, safe storage and transportation, recycling, and second-use. For EPA, it provided $10 million in funding for EPA to develop battery collection best practices that may be implemented by state, tribal, and local governments, including U.S. territories and the District of Columbia. It also provided $15 million in funding for EPA to establish a program to develop voluntary labeling guidelines for batteries and other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. EPA and DOE are closely coordinating to carry out these investments to support battery collection and recycling infrastructure and communication materials. Together, EPA's and DOE's battery collection and recycling investments will help make it easier for the American people to recycle their batteries through proper channels and recover critical materials from batteries to strengthen the nation's battery supply chain.

IV. Request for Information

Over the course of 2022, ORCR will be hosting virtual meetings across the country with interested stakeholders to inform the development of the new programs established by the Bipartisan Infrastructure Law. This RFI and the other RFIs aim to supplement those planned consultations and provide all interested individuals and organizations with the opportunity to share their perspectives on barriers and opportunities related to solid waste management infrastructure. EPA has also begun a series of strategies on building a circular economy for all, starting with the National Recycling Strategy.[7] EPA is intending to develop a strategy to increase the circularity of electronics, including batteries, in order to reduce the life cycle environmental impact of these materials and increase the circularity of critical minerals. The information gathered here may also support that effort.

EPA has already endeavored to learn about the proper end-of-life management of batteries from its previous work to increase the recycling of batteries or electronics. EPA's Sustainable Electronics Challenge[8] has encouraged electronics manufacturers, brand owners and retailers reduce environmental impacts across the lifecycle of electronic products. This includes the increased collection and recycling of electronics and their batteries to recover critical minerals. EPA also has held several educational

[1] *https://www.commerce.gov/data-and-reports/reports/2019/06/federal-strategy-ensure-secure-and-reliable-supplies-critical-minerals.*

[2] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/.*

[3] *https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.*

[4] Strategic and critical minerals are any materials that are needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and that are not found or produced in the U.S. in sufficient quantities to meet such need.

[5] Argus. (2017). The lithium market—the future is electric. *https://www.argusmedia.com/-/media/Files/white-papers/the-lithium-market-the-future-is-electric.ashx.*

[6] *https://www.energy.gov/eere/articles/harnessing-power-battery-rdd-battle-climate-change.*

[7] *https://www.epa.gov/recyclingstrategy/strategies-building-circular-economy-all.*

[8] *https://www.epa.gov/smm-electronics/sustainable-materials-management-smm-electronics-challenge#01.*

webinars [9] on the hazards batteries pose in the waste stream and released a report in July 2021 which explored the growing number of fires from lithium batteries during waste management, *An Analysis of Lithium-ion Waste Fires in Waste Management and Recycling.*[10] In October 2021, EPA held a two-day virtual stakeholder workshop aimed at addressing the issues caused by improperly disposed lithium-ion batteries, improving collection logistics, labeling, public education, design for recycling, and strategies to promote the recycling of either small format consumer electronic batteries or large format (electric vehicle, stationary source) batteries.[11] The lithium-ion battery workshop discussions have provided initial information and identified additional areas for stakeholder input that would be of help to the Bipartisan Infrastructure Law battery efforts.

To build on this information and better inform the development of best practices with respect to the collection of batteries to be recycled and establish a program to promote battery recycling through the development of voluntary labeling guidelines for batteries and communication materials under the Bipartisan Infrastructure Law, EPA has identified some key information categories on which stakeholder insights would be most helpful:

- Scope and prioritization of the battery collection best practices
- Understanding the battery collection and recycling system
- Information on labeling guidelines for batteries regarding reuse and recycling
- Information on battery reuse and recycling communication materials directed towards battery producers and consumers

Following each information category, EPA has included a list of suggested questions as a helpful guide for consideration in preparing comments. EPA provides these questions simply to guide the type of comments the Agency would find useful to help inform the battery collection best practices and labeling efforts. EPA is interested in information about small format, large format, and industrial batteries. EPA encourages commenters to provide any other feedback or information that EPA should consider in developing best practices for the collection of batteries to be recycled, voluntary labeling guidelines for batteries, and communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. EPA also requests that commenters include, wherever possible, supporting data or other qualitative information such as information about the barriers and challenges to collecting batteries for recycling and battery labels, successful battery collection programs and battery labels, and details on measurable benefits for industry, government, or consumers.

A. Suggestions on the Scope and Prioritization of the Battery Collection Best Practices

The suggested questions below provide an opportunity for all commenters to provide input on the battery types, such as small consumer batteries and large format batteries (including electric vehicles and grid energy storage) and battery chemistries, including but not limited to: lithium based, nickel-metal hydride, and other battery chemistries to inform the scope of the best practices. For lead-acid batteries, EPA is aware that these batteries are manufactured with antimony, a critical mineral, and are currently recycled at a high rate especially from vehicles; thus, lead-acid batteries may not need to be considered in the battery collection best practices. However, EPA is interested in information on other lead-acid batteries such as small, sealed lead acid batteries that may not be recycled at a high rate. The suggested questions also are seeking information to inform the prioritization of which battery types/chemistries the collection best practices should target that will help increase the recovery of critical minerals, while also ensuring safe used battery recycling. EPA is also interested in any existing studies or reports with background information on batteries and their collection and recycling. EPA is interested in both batteries embedded in devices and standalone batteries. Commenters, however, should feel free to provide whatever pertinent information that would be useful to EPA as we consider the scope of the battery collection best practices. Commenters should clearly indicate whether the comment pertains to batteries embedded in devices and/or standalone batteries.

- Please share any existing studies and reports with background information on:
  - Battery types (*e.g.,* small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries that are manufactured with critical materials and/or critical minerals.[12]
  - Battery types (*e.g.,* small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries currently being collected and recycled; numbers of each battery type/chemistry recycled and disposed in the U.S. as well as number of batteries exported for recycling.
  - Battery types (*e.g.,* small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries that best serve as feedstock into the manufacture of non-battery products or other applications.
  - General geographic location of the battery recycling markets (*e.g.,* percentages of batteries that go for recycling by geographic region, exported to certain countries, or by specific companies).
- What battery types (such as small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries have caused concerns when disposed of improperly?
- What types of battery handlers in the reuse and recycling system should be included in the best practices for the collection of batteries for recycling?
- What are the recycling markets for batteries? Which battery types/chemistries serve as feedstock into manufacturing new batteries?
- How do state, tribal, and local governments, including U.S. territories and the District of Columbia, handle battery collection and recycling (*e.g.,* under a specific policy, as part of an electronics waste program, etc.)? Please provide information and a description of the policy or program. What impact has the policy or program had on battery collection and recycling?
- What barriers are state, tribal, and local governments, including U.S. territories and the District of Columbia, facing regarding battery collection and recycling (*e.g.,* lack of consumer participation, fire hazards, consumer mismanagement, lack of training for facility workers, battery removability) and what resources are needed to overcome them?
- What state, tribal and local programs, including U.S. territories and

[9] *https://www.epa.gov/smm/sustainable-materials-management-smm-web-academy-webinar-introduction-lithium-batteries-and.*

[10] *https://www.epa.gov/recycle/importance-sending-consumers-used-lithium-ion-batteries-electronic-recyclers-or-hazardous.*

[11] Summary Report for the EPA Lithium-Ion Battery Disposal and Recycling Stakeholder Workshop in October 2021, *https://www.epa.gov/recycle/workshop-lithium-ion-batteries-waste-stream.*

[12] U.S. Geological Survey 2022 List of Critical Minerals, *https://www.usgs.gov/news/national-news-release/us-geological-survey-releases-2022-list-critical-minerals.*

the District of Columbia, have been successful in achieving high recovery of critical minerals from end-of-life batteries?

• Do state, tribal, and local governments, including U.S. territories and the District of Columbia, find common problems in educating the public about how batteries are collected?

• Do state, tribal, and local governments, including U.S. territories and the District of Columbia, find common problems at battery collection? What existing best practices have been developed to address these common issues? How have these best practices increased safe battery recycling?

• What problems have battery collection facilities encountered when handling and processing batteries?

• Are there any evidence-based best practices for the collection of end-of-life batteries? If so, which organizations have developed them, what do commenters find useful about these practices, and what could be improved about them?

• Do any communication materials exist on evidence-based battery collection best practices? If so, what could EPA improve about these communication materials. If not, what communication materials can EPA develop for state, tribal, and local governments, including U.S. territories and the District of Columbia, on battery collection best practices that would be useful for battery collection handlers and workers?

• Is battery recycling accessible for residents in environmental justice communities? Do collection practices differ between urban, suburban, or rural areas?

• What resources are needed to provide access and capacity building for residents in environmental justice communities without battery collection programs?

B. Understanding the Battery Collection and Recycling System

To help EPA better understand the end-of-life collection and management of batteries, the Agency would like information on the key entities in the battery recycling process, including all the intermediary facilities in the process. In addition to consumer batteries, EPA also is interested in information on electric vehicle and grid energy storage batteries. Suggested questions to consider for comment submission include:

• What are all of the steps in the battery recycling process, from point of collection to final integration into a new product?

• What are the barriers to recycling and reuse of batteries? What are the barriers to recycling of small consumer batteries (*e.g.,* removability of the batteries from the devices)? What are the barriers unique to recycling of large batteries, including those for grid energy storage and vehicle batteries?

• What are the barriers to maximizing the recovery of critical materials and minerals during the collection and recycling process? Where are losses of critical materials occurring in the battery collection and recycling system? Where are their opportunities to improve the recovery of critical materials in the battery collection and recycling system?

• What are the concerns and challenges with battery recycling faced by each entity in the battery recycling chain?

• How are batteries collected in different areas—at collection facilities, special household hazardous waste collection, or electronics recycling events? What types of batteries (*e.g.,* small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries are targeted for collection? Are there any negative impacts on the community from these battery collection sites?

• What types of facilities collect batteries in different areas (*e.g.,* retail stores; government facilities, including libraries, fire stations, or other government facilities; electronic waste service businesses, scrap yards, and car dealerships, etc.)? What battery types/chemistries are collected? What collection methods are used (*e.g.,* one bin for all battery types, multiple bins for different types of batteries, etc.)? What practices do collection sites utilize to safely accumulate batteries on site? What guidelines or requirements (*e.g.,* tape battery ends or place in plastic bags, etc.) do consumers need to follow to drop off their used batteries? What are the costs and/or service fees charged for battery collection/recycling? When do original equipment manufacturers take back or retain ownership of batteries at end-of-life?

• How are batteries that are damaged, defective, or recalled managed when collected?

• What packing requirements are there for collected used batteries to be accepted by the next entity in the battery recycling chain?

• What businesses serve as sorters and/or reuse and repair facilities (*e.g.,* are they the same facilities that recycle electronic devices and electronic waste accessories)? What sorting methods are used, such as by hand, technology, etc.? How has the sorting method impacted the battery types recycled? What practices and trainings are utilized at battery sorting and reuse and repair facilities to protect workers from the hazards of handling and processing used batteries?

• Which battery types/chemistries are sorted for reuse and repair versus recycling? What criteria determines the acceptability for reuse and repair? Which used batteries are designated for second life or refurbished? What are the markets for second life and refurbished batteries? What industry standards or other standards/specifications must be met for batteries that are repurposed into other uses?

• What businesses serve as initial battery recycling pre-processing facilities (*e.g.,* are there businesses that specialize in battery recycling or is it done at the same facilities where electronic devices are recycled)? How many of these facilities operate in the U.S.? What battery types/chemistries are taken for pre-processing? What pre-processing technologies are utilized at these facilities, (*e.g.,* crushing, disassembly)? How does the pre-processing technology impact the amount of the materials recovered from the used batteries?

• How many battery recycling facilities are there in the United States? What types of batteries (*e.g.,* small consumer batteries, large format vehicle and grid energy storage batteries, and industrial batteries) and chemistries are recycled at these facilities? What form of battery materials are accepted for recycling (*e.g.,* disassembled batteries, crushed batteries, intact batteries, etc.)? What technologies are utilized to recycle batteries? How does the recycling technology impact the amount of materials recovered from the used batteries?

C. Information on Battery Labeling Guidelines

Under the Bipartisan Infrastructure Law, EPA is required to develop voluntary labeling guidelines for batteries and other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. To undertake this effort, the Agency would like to obtain input on the scope of the development of voluntary labeling guidelines and understand existing battery labeling guidelines. The Agency also would like to obtain input from commenters on the scope of the development of other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials

from batteries as well as information on the existing communication materials that have been developed on the end-of-life management of batteries. In addition to labeling guidelines and communication materials for consumer batteries, EPA also is interested in communication materials for electric vehicle and grid energy storage batteries. Suggested questions to consider for comment submission on labeling practices/requirements include:

Scope of Voluntary Labeling Guidelines

- What should be the goals of developing voluntary labeling guidelines for batteries (*e.g.,* increase critical minerals recovery, provide information to consumers about recycling and where they should bring their batteries; provide information to sorters and/or recyclers about the chemistry in the batteries; provide information to entities in the vehicle management chain—dealerships, repair shops, auction houses, dismantlers, entities that repurpose electric vehicle batteries, refurbishers, and scrap yards about vehicle battery recycling)?
- What information should be included on the label to achieve those goals (*e.g.,* instructions on how to locate a collection or recycling facility, chemistry of batteries, symbol for not throwing batteries in the trash, curbside recycling bin or other inappropriate location)? How can this information be conveyed clearly to non-English speakers?
- Where should a label be placed (on battery, on device, on packaging, in store, or other location)?
- What considerations should be accounted for in developing labeling guidelines for batteries that will be widely adopted for use by battery producers/manufacturers?

Knowledge of Existing Battery Labeling Guidelines

- What do consumers find confusing with current battery labels? Please share any evidence-based consumer studies that have been conducted on battery labels. How can the battery labels be improved?
- What are the barriers to battery labeling for the manufacturers and for the collections and sorting facilities?
- What state, tribal, and local governments including U.S. territories and the District of Columbia, industry, standard-setting organizations, international organizations, and countries have existing battery labeling guidelines? What are the labeling practice/requirements/guidelines for the battery chemistry composition or the end-of-life management, including whether they are voluntary or mandatory?
- How long have the labeling practices/guidelines been in existence?
- What is the use/adoption rate by battery manufacturers? Why are some existing labeling standards adopted by battery manufacturers and not others? What are the barriers for adopting other labeling standards?
- How have these existing labeling programs impacted battery recycling?
- How are the labeling practices/requirements/guidelines administered? Are they administered by a specific organization or other mechanism? If administered by an organization, how does it operate, including how is it funded for its maintenance and operations?

D. Communication Materials for Battery Producers and Consumers About the Reuse and Recycling of Critical Materials From Batteries

Under the Bipartisan Infrastructure Law, EPA also is required to develop other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. To undertake this effort, the Agency would like to understand the existing communication materials that have been developed on the reuse and recycling of critical materials from batteries geared toward battery producers and consumers. EPA also would like to understand the existing communication materials that have been developed to help consumers on how and where to recycle their batteries. In addition to communication materials about small consumer battery recycling, EPA also is interested in existing communications materials about large format (electric vehicle and grid energy storage) batteries, and industrial batteries. Suggested questions to consider for comment submission on existing communication materials on the reuse and recycling of critical materials from batteries include:

- How do consumers think about reusing and recycling used batteries (*e.g.,* in the same manner as household recyclables or electronic wastes)?
- How do battery producers think about reusing and recycling critical minerals from used batteries? Have there been specific efforts focused on communicating about reuse and recycling of used batteries with battery producers?
- EPA is aware of some battery reuse and recycling communication materials that have been developed, including in Minnesota—Be Our Battery Hero,[13] Larimer County, Colorado—Be Alert! Divert Hidden Batteries,[14] and the Rechargeable Battery Recycling Corporation (RBRC)—Avoid the Spark.[15] What other existing communication materials on the end-of-life management of batteries have been developed by federal, state, tribal, and local governments including U.S. territories and the District of Columbia, industry, and EU and other international countries and organizations? Please include a description of the key outreach components, target audiences, and the format of the materials (*e.g.,* toolkits, print resources, images, videos, social media messages, etc.). What do commenters find most useful about these existing communication materials? What evidence and data are available to demonstrate the impacts from these communication materials?
- What communication materials can EPA develop to assist state, tribal, and local governments, including U.S. territories and the District of Columbia, about battery collection and recycling to increase the recovery of critical minerals from batteries? What information/messages should be included in the communication materials for battery producers? For consumers? What resources do state, tribal, and local governments, including U.S. territories and the District of Columbia, need to educate and elicit positive battery producer and consumer behavior changes for used batteries?
- The Agency is aware of websites, such as Earth911 and RBRC's *Call2recycle.org*, that can provide consumers and businesses with information on managing their used batteries. What other tools and resources have been developed by federal, state, tribal, and local governments including U.S. territories and the District of Columbia, industry, non-profit organizations, EU and other international organizations and countries to help consumers, businesses, and the entities in the battery reuse and recycling chain manage used batteries? Please include information and a description of the tools and resources (*e.g.,* battery identification guides, call centers, battery collection locators, mobile phone applications, social media tools, etc.). What evidence and data are

[13] *https://recyclingandenergy.org/wp-content/uploads/2021/08/Be-A-Battery-Hero-Informational.pdf.*

[14] *https://www.larimer.org/solidwaste/batteries.*

[15] *https://www.call2recycle.org/avoid-the-spark/#campaign-highlights.*

available to demonstrate the impacts from these tools and resources?

V. Disclaimer and Important Note

This RFI is issued solely for information, research and planning purposes and does not constitute a Request for Proposals (RFP) or a Request for Applications (RFA). Any information obtained as a result of this RFI is intended to be used by EPA on a non-attribution basis to support EPA's efforts to develop best practices for the collection of batteries to be recycled, voluntary labeling guidelines for batteries, and communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries. This RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. EPA will review and consider all responses in its development of battery collection best practices and creation of voluntary battery labeling guidelines that are the subject of this request. This RFI does not represent any award commitment on the part of EPA, nor does it obligate EPA to pay for costs incurred in the preparation and submission of any responses.

Dated: June 3, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–12459 Filed 6–8–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 20–205; DA 22–518; FR ID 90583]

Notice of 90-Day Period To Submit Affirmation of Operational Status of Identified Earth Station Antennas To Avoid Losing Incumbent Status or File To Remove Identified Antennas From IBFS if No Longer Operational

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the International Bureau (Bureau) provides the following notice to operators of certain incumbent FSS C-band earth station antennas recently reported to the Bureau by RSM US LLP (RSM), the C-band Relocation Coordinator, on behalf of incumbent C-band satellite operators: Failure to submit a filing to the Bureau by no later than 90 days after the release of the Bureau's Public Notice (*i.e.,* by August 10, 2022) affirming the continued operation of the earth station antennas reported to the Bureau as inactive and the intent to participate in the C-band transition will result in a Bureau announcement that those authorizations identified as inactive in the Appendix attached to the Bureau's Public Notice have automatically terminated by operation of rule, and that those authorizations will be terminated in IBFS and removed from the incumbent earth station list. According to RSM, each antenna included in the Appendix to the Bureau's Public Notice was reported by their earth station operator to RSM or a satellite operator as no longer receiving service from a C-band satellite even though the FCC's International Bureau Filing System (IBFS) continues to include the antenna as active.

DATES: Identified earth station operators must provide notice of operational status by August 10, 2021.

FOR FURTHER INFORMATION CONTACT: Kerry Murray, International Bureau, Satellite Division, at (202) 418–0734, *Kerry.Murray@fcc.gov* or *IBFSINFO@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 22–518, released May 12, 2022. The full text of this document, along with the Appendix identifying the specific earth station antennas subject to automatic termination, is available for public inspection and can be downloaded at *https://www.fcc.gov/document/ib-identifies-inactive-c-band-incumbent-earth-station-antennas* or by using the search function for IB Docket No. 20–205 on the Commission's ECFS page at *www.fcc.gov/ecfs.*

Background. Under the Commission's *3.7 GHz Band Report and Order,* RSM is responsible for coordinating with the five incumbent C-band satellite operators—Eutelsat, Intelsat, SES, StarOne, and Telesat—to ensure that all incumbent earth stations are accounted for in the transition.[1] The overwhelming majority of incumbent earth stations have been claimed by the satellite operator(s) from which they receive service, included in the relevant satellite operators' transition plans to the Commission, and will be transitioned to the upper 200 megahertz of the band.[2] RSM, as the C-band Relocation Coordinator, and the satellite operators have conducted outreach and research to determine whether incumbent earth station antennas are still operational in the 3.7 GHz band and, if so, from which satellite(s) the earth station receives its service.[3] RSM has advised the Commission that it and the incumbent satellite operators regularly share the results of their respective outreach efforts to better coordinate the transition of incumbent earth stations.

In the course of their outreach, the satellite operators and RSM have identified certain entries on the incumbent list that they report include antennas that are not active C-band antennas in the 3.7 GHz band. According to RSM, these entries include: (1) C-band antennas that are inactive or non-operational, (2) authorizations that list more C-band antennas than are currently operational at a site,[4] and (3) operational antennas that do not receive in the 3.7 GHz band.[5] RSM represents that these earth station operators have failed to make filings in the FCC's IBFS to reflect the correct status of those antennas.

On May 6, 2022, RSM submitted a letter identifying these individual earth station antennas that fall into one of the three categories listed above, which are included on the latest incumbent earth station list and continue to be listed in IBFS.[6] RSM explains that it compiled this group of antennas—which were not included in the January 19 PN, July 23 PN, or September 27 PN—from representations made to RSM by the satellite operators. We have attached to this PN an Appendix listing the antennas submitted by RSM that fall into the three categories.[7]

[1] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2391, paragraphs. 116 through23 (2020) (*3.7 GHz Band Report and Order*). As a reminder, the Commission decided in the *3.7 GHz Band Report and Order* that it will no longer accept applications for registration and licenses for FSS operations in the 3.7–4.0 GHz band in the contiguous United States and that it will not accept applications for new earth stations in the 4.0–4.2 GHz band in the contiguous United States for the time being, during the C-band transition. *3.7 GHz Band Report and Order,* 35 FCC Rcd at 2407, paragraphs. 149 through151.

[2] 47 CFR 27.1412(d) (transition plan requirements). The satellite operators also file quarterly status reports in GN Docket No. 20–173. 47 CFR 27.1412(f).

[3] *3.7 GHz Band Report and Order,* 35 FCC Rcd 2343, 2460, para. 313.

[4] According to RSM, in these cases an authorization holder has included in IBFS, in one or more callsigns, more C-band receive antennas at a site than exist at that site—*e.g.,* 10 antennas registered when there are only six antennas at the site.

[5] For instance, RSM has represented that certain antennas on the Incumbent List do not receive in the 3.7 GHz band, but are instead antennas operating on Ku band or Ka band frequencies.

[6] *See* May 6 RSM filing. The May 6 RSM filing, with its attachment, can be found in ECFS. *See also* May 14, 2022, Incumbent Earth Station List, *as corrected,* April 4, 2022, DA 22–266.

[7] The May 6 RSM filing also included two registrations where RSM represents that the same antenna is registered by different entities. As we cannot presume which of the two registrations

We hereby presume as a factual matter, on a rebuttable basis, that earth station antennas included in the Appendix are not active antennas receiving in the 3.7 GHz band, or that the C-band earth station antennas associated with a given site, as reflected on the incumbent list, exceed the actual number of such antennas located at that site. Absent factual rebuttal from the earth station operator by August 10, 2022, these antennas would not satisfy the Commission's C-band transition rules that antennas must be operational C-band antennas entitled to interference protection in the 3.7 GHz band to qualify for incumbent status.[8] For inactive earth stations, section 25.161(c) of the Commission's rules provides that an earth station authorization is automatically terminated if the station is not operational for more than 90 days.[9] Where a registration lists more antennas than have been observed to exist at a site, the apparently non-existent antennas will be deemed never to have existed and, accordingly, will fail to qualify for incumbent status under the C-band transition rules. Similarly, antennas that operate in other bands but do not receive in the 3.7 GHz band would not qualify for incumbent status under the C-band transition rules.[10]

Incumbent earth station operators who need to affirm the continued operation of the identified earth station antennas. We direct earth station operators with incumbent earth station antennas that appear on the appended list to make either of two filings no later than 90 days after release of this Notice (*i.e.,* by August 10, 2022): (1) file to correct the IBFS filings for the affected antennas,[11] or (2) file in ECFS IB Docket No. 20–205 affirming that those antennas are operational antennas receiving in the 3.7 GHz band. An earth station operator may contact Bureau staff at *IBFSINFO@fcc.gov* if it has questions about the above or if it needs instructions on how to surrender entire Callsigns in IBFS, how to remove an inactive earth station antenna from a Callsign that includes other operational earth station antennas, or how to modify its Callsign to accurately reflect the bands used by an antenna.

Earth station operators with earth station antenna(s) on the attached list that do not respond by August 10, 2022, affirming operation of the identified earth station antennas in the 3.7 GHz band [12] will be deemed, based on the above presumptions, to have had either their authorizations to use the 3.7 GHz band for those antennas or their interference protection in the use of the 3.7 GHz band automatically terminated by rule. In those cases, the Bureau also will, as needed, terminate in IBFS those portions of the authorizations relating to the 3.7 GHz band and/or make changes in IBFS necessary to accurately reflect actual use of and interference protection for the relevant facilities. In addition, the Bureau will correct the incumbent earth station list by removing terminated earth station antennas and amending the list to no longer include any antennas in the list that are not operational C-band antennas, including over-registered antennas or antennas receiving in bands other than the 3.7 GHz band. Protection from interference from the network deployments of new wireless licenses and eligibility for reimbursement of any transition costs, including the cost of any filters, will be limited to those earth station antennas on the updated list.

Incumbent earth station operators who need to provide additional information to avoid harmful interference. As a reminder, while not subject to 90-days' notice, earth station operators that have not provided the necessary information to the Relocation Coordinator or satellite operators may not be successfully transitioned before terrestrial wireless licensees initiate service in the band.

Unless those earth station operators provide the necessary information, they will risk losing their rights to receive relocation assistance prior to the initiation of service in the band by the incoming terrestrial wireless licensees, as well as any rights to operate in the lower C-band at their current locations free of harmful interference that may occur as these licensees deploy their networks.

Federal Communications Commission.

Troy Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2022–12390 Filed 6–8–22; 8:45 am]

BILLING CODE 6712–01–P

should be terminated (assuming that the registrations are in fact duplicative), we do not include those registrations in the attachment to this Public Notice and they are not subject to the 90-day deadline for response. Following its normal processes, the Bureau will, however, follow up with the two registrants to determine whether the registrations are duplicative and, if so, which should be removed from the Incumbent List and from IBFS.

[8] 47 CFR 25.138(c)(1). *See* note 4 *supra.* As noted above, note 2 *supra,* the earth station antennas listed in the Appendix hereto do not include those that are subject to lump sum elections. Those elections may include C-band antennas whose operators have decided to discontinue all use of the C-band by the end of the C-band transition.

[9] 47 CFR 25.161(c). The Bureau has delegated authority to enforce the Part 25 rules. 47 CFR 0.261(a)(15).

[10] For the latter two groups of antennas, we note that the following rules would apply: (1) section 25.162(c) and (e) of the Commission's rules provide that the interference protection of a receiving earth station is automatically terminated in certain circumstances, including when a station has been used less than 50% of the time during any 12-month period or when actual use of the facility is inconsistent with what is in a registrant's application, 47 CFR 25.162(c) & (e), and (2) section 25.115(b)(8) of the Commission's rules require earth station operators to take the steps necessary to remove non-operational antennas from the active records in the IBFS, 47 CFR 25.115(b)(8).

[11] In addition to the required filings in IBFS, those earth station operators may also make a filing in ECFS IB Docket No. 20–205 confirming the extent to which they are surrendering callsigns, removing antennas, or modifying callsigns in IBFS.

[12] Notwithstanding an affirmation of continued operation, the Bureau retains the authority to eliminate an earth station antenna's incumbent status if the Bureau receives additional evidence that the antenna has failed to satisfy applicable requirements for maintaining operation or is otherwise ineligible to be considered an incumbent.

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 22–598; FRS 90561]

Informal Working Group-1, Informal Working Group-2, Informal Working Group-3, and Informal Working Group-4 of the World Radiocommunication Conference Advisory Committee Schedule Their Meetings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice advises interested persons that Informal Working Group 1 (IWG–1), Informal Working Group 2 (IWG–2,) Informal Working Group 3 (IWG–3, and Informal Working Group 4 (IWG–4) of the 2023 World Radiocommunication Conference Advisory Committee (WRC–23 Advisory Committee) have scheduled meetings as set forth below. The meetings are open to the public.

DATES: IWG–1: Friday, June 17, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–2: Friday, June 17, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–3: Tuesday, June 21, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–4: Tuesday, June 21, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–1: Tuesday, July 5, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–2: Tuesday, July 5, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–3: Thursday, July 14, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–4: Thursday, July 14, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–1: Tuesday, August 2, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–2: Tuesday, August 2, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–1: Tuesday, August 9, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–2: Tuesday, August 9, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–3: Thursday,

August 11, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–4: Thursday, August 11, 2022 (1:00 p.m.–3:00 p.m. EDT); IWG–3: Tuesday, August 30, 2022 (10:00 a.m.–12:00 p.m. EDT); IWG–4: Tuesday, August 30, 2022 (1:00 p.m.–3:00 p.m. EDT).

ADDRESSES: The meetings will be held virtually.

FOR FURTHER INFORMATION CONTACT: Dante Ibarra, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at *Dante.Ibarra@fcc.gov,* (202) 418–0610 or *WRC-23@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2023 World Radiocommunication Conference (WRC–23).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the IWG–1, IWG–2, IWG–3 and IWG–4 of the WRC–23 Advisory Committee scheduled meetings. The Commission's WRC–23 website (*www.fcc.gov/wrc-23*) contains the latest information on all scheduled meetings, meeting agendas, and WRC–23 Advisory Committee matters.

Below is additional IWG meeting information:

WRC–23 Advisory Committee Schedule of Meetings of Informal Working Groups 1, 2, 3 and 4

Informal Working Group 1: Maritime, Aeronautical and Radar Services

Chair—Damon Ladson, *dladson@hwglaw.com,* (202) 730–1315
Vice Chair—Kim Kolb, *kim.l.kolb@boeing.com,* (703) 465–3373
FCC Representatives: Louis Bell, *louis.bell@fcc.gov,* telephone: (202) 418–1641; Gregory Baker, *Gregory.baker@fcc.gov,* telephone: (202) 418–0611

IWG–1—Meetings

IWG–1 Meeting Date: Friday, June 17, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1609858494?pwd=bzlnZVFhK0xYOEJaa3hHZnMzVFMyQT09
Meeting ID: 160 985 8494
Passcode: 554585
One tap mobile:
+16692545252,,1609858494#,,,,*554585# U.S. (San Jose)
+16468287666,,1609858494#,,,,*554585# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 985 8494
Passcode: 554585
Find your local number: https://fcc-gov.zoomgov.com/u/ajtFuOgdJ

IWG–1 Meeting Date: Tuesday, July 5, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1609858494?pwd=bzlnZVFhK0xYOEJaa3hHZnMzVFMyQT09
Meeting ID: 160 985 8494
Passcode: 554585
One tap mobile:
+16692545252,,1609858494#,,,,*554585# U.S. (San Jose)
+16468287666,,1609858494#,,,,*554585# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 985 8494
Passcode: 554585
Find your local number: https://fcc-gov.zoomgov.com/u/ajtFuOgdJ

IWG–1 Meeting Date: Tuesday, August 2, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1609858494?pwd=bzlnZVFhK0xYOEJaa3hHZnMzVFMyQT09
Meeting ID: 160 985 8494
Passcode: 554585
One tap mobile:
+16692545252,,1609858494#,,,,*554585# U.S. (San Jose)
+16468287666,,1609858494#,,,,*554585# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 985 8494
Passcode: 554585
Find your local number: https://fcc-gov.zoomgov.com/u/ajtFuOgdJ

IWG–1 Meeting Date: Tuesday, August 9, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1609858494?pwd=bzlnZVFhK0xYOEJaa3hHZnMzVFMyQT09
Meeting ID: 160 985 8494
Passcode: 554585
One tap mobile:
+16692545252,,1609858494#,,,,*554585# U.S. (San Jose)
+16468287666,,1609858494#,,,,*554585# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 985 8494
Passcode: 554585
Find your local number: https://fcc-gov.zoomgov.com/u/ajtFuOgdJ

Informal Working Group 2: Terrestrial Services

Chair—Jayne Stancavage, *Jayne.Stancavage@intel.com,* (408) 887–3186
Vice Chair—Daudeline Meme, *daudeline.meme@verizon.com,* (202) 253–8362
FCC Representatives: Louis Bell, *louis.bell@fcc.gov,* telephone: (202) 418–1641; Dante Ibarra, *dante.ibarra@fcc.gov,* telephone: (202) 418–0610

IWG–2—Meetings

IWG–2 Meeting Date: Friday, June 17, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1606889204?pwd=Z0FYemN2djlFeHlROFZMN0RvQ3JMUT09
Meeting ID: 160 688 9204
Passcode: 332612
One tap mobile:
+16692545252,,1606889204#,,,,*332612# U.S. (San Jose)
+16468287666,,1606889204#,,,,*332612# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 688 9204
Passcode: 332612
Find your local number: https://fcc-gov.zoomgov.com/u/aeJeShcBGT

IWG–2 Meeting Date: Tuesday, July 5, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1606889204?pwd=Z0FYemN2djlFeHlROFZMN0RvQ3JMUT09
Meeting ID: 160 688 9204
Passcode: 332612
One tap mobile:
+16692545252,,1606889204#,,,,*332612# U.S. (San Jose)
+16468287666,,1606889204#,,,,*332612# U.S. (New York)

Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 688 9204
Passcode: 332612
Find your local number: https://fcc-gov.zoomgov.com/u/aeJeShcBGT

IWG–2 Meeting Date: Tuesday, August 2, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1606889204?pwd=Z0FYemN2djlFeHlROFZMN0RvQ3JMUT09
Meeting ID: 160 688 9204
Passcode: 332612
One tap mobile:
+16692545252,,1606889204#,,,,*332612# U.S. (San Jose)
+16468287666,,1606889204#,,,,*332612# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 688 9204
Passcode: 332612
Find your local number: https://fcc-gov.zoomgov.com/u/aeJeShcBGT

IWG–2 Meeting Date: Tuesday, August 9, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1606889204?pwd=Z0FYemN2djlFeHlROFZMN0RvQ3JMUT09
Meeting ID: 160 688 9204
Passcode: 332612
One tap mobile:
+16692545252,,1606889204#,,,,*332612# U.S. (San Jose)
+16468287666,,1606889204#,,,,*332612# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 551 285 1373 U.S.
+1 669 216 1590 U.S. (San Jose)
Meeting ID: 160 688 9204
Passcode: 332612
Find your local number: https://fcc-gov.zoomgov.com/u/aeJeShcBGT

Informal Working Group 3: Space Services

Chair—Giselle Creeser, *giselle.creeser@intelsat.com,* (703) 559–7851
Vice Chair—Ryan Henry, *ryan.henry@ses.com,* (202) 878–9360
FCC Representatives: Clay DeCell, *clay.decell@fcc.gov,* telephone: (202) 418–0803; Kathyrn Medley, *kathyrn.medley@fcc.gov,* telephone: (202) 418–1211; Eric Grodsky, *eric.grodsky@fcc.gov,* telephone: (202) 418–0563; Dante Ibarra, *dante.ibarra@fcc.gov,* telephone: (202) 418–0610

IWG–3—Meetings

IWG–3 Meeting Date: Tuesday, June 21, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1607372803?pwd=L3BRaUJ2N1FrTDB3cmFSUnVMVzMxQT09
Meeting ID: 160 737 2803
Passcode: 970658
One tap mobile:
+16692545252,,1607372803#,,,,*970658# U.S. (San Jose)
+16468287666,,1607372803#,,,,*970658# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 737 2803
Passcode: 970658
Find your local number: https://fcc-gov.zoomgov.com/u/aITdLAKu6

IWG–3 Meeting Date: Thursday, July 14, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1607372803?pwd=L3BRaUJ2N1FrTDB3cmFSUnVMVzMxQT09
Meeting ID: 160 737 2803
Passcode: 970658
One tap mobile:
+16692545252,,1607372803#,,,,*970658# U.S. (San Jose)
+16468287666,,1607372803#,,,,*970658# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 737 2803
Passcode: 970658
Find your local number: https://fcc-gov.zoomgov.com/u/aITdLAKu6

IWG–3 Meeting Date: Thursday, August 11, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1607372803?pwd=L3BRaUJ2N1FrTDB3cmFSUnVMVzMxQT09
Meeting ID: 160 737 2803
Passcode: 970658
One tap mobile:
+16692545252,,1607372803#,,,,*970658# U.S. (San Jose)
+16468287666,,1607372803#,,,,*970658# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 737 2803
Passcode: 970658
Find your local number: https://fcc-gov.zoomgov.com/u/aITdLAKu6

IWG–3 Meeting Date: Tuesday, August 30, 2022

Time: 10:00 a.m.–12:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1607372803?pwd=L3BRaUJ2N1FrTDB3cmFSUnVMVzMxQT09
Meeting ID: 160 737 2803
Passcode: 970658
One tap mobile:
+16692545252,,1607372803#,,,,*970658# U.S. (San Jose)
+16468287666,,1607372803#,,,,*970658# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 737 2803
Passcode: 970658
Find your local number: https://fcc-gov.zoomgov.com/u/aITdLAKu6

Informal Working Group 4: Regulatory Issues

Chair—Stephen Baruch, *sbaruch@newwavespectrum.com,* (240) 476–2600
Vice Chair—Alex Epshteyn, *epshtey@amazon.com,* (703) 963–6136
FCC Representatives: Dante Ibarra, *dante.ibarra@fcc.gov,* telephone: (202) 418–0610; Clay DeCell, *clay.decell@fcc.gov,* telephone: (202) 418–0803

IWG–4—Meetings

IWG–4 Meeting Date: Tuesday, June 21, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1600725771?pwd=d3pCNS9FY2RhWGVaQWFaeVBCQ2EwUT09
Meeting ID: 160 072 5771
Passcode: 624667
One tap mobile:
+16692545252,,1600725771#,,,,*624667# U.S. (San Jose)
+16468287666,,1600725771#,,,,*624667# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 072 5771

Passcode: 624667
Find your local number: https://fcc-gov.zoomgov.com/u/adlrIfZWcR

IWG–4 Meeting Date: Thursday, July 14, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1600725771?pwd=d3pCNS9FY2RhWGVaQWFaeVBCQ2EwUT09
Meeting ID: 160 072 5771
Passcode: 624667
One tap mobile:
+16692545252,,1600725771#,,,,*624667# U.S. (San Jose)
+16468287666,,1600725771#,,,,*624667# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 072 5771
Passcode: 624667
Find your local number: https://fcc-gov.zoomgov.com/u/adlrIfZWcR

IWG–4 Meeting Date: Thursday, August 11, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1600725771?pwd=d3pCNS9FY2RhWGVaQWFaeVBCQ2EwUT09
Meeting ID: 160 072 5771
Passcode: 624667
One tap mobile:
+16692545252,,1600725771#,,,,*624667# U.S. (San Jose)
+16468287666,,1600725771#,,,,*624667# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 072 5771
Passcode: 624667
Find your local number: https://fcc-gov.zoomgov.com/u/adlrIfZWcR

IWG–4 Meeting Date: Tuesday, August 30, 2022

Time: 1:00 p.m.–3:00 p.m. EDT

Join ZoomGov Meeting: https://fcc-gov.zoomgov.com/j/1600725771?pwd=d3pCNS9FY2RhWGVaQWFaeVBCQ2EwUT09
Meeting ID: 160 072 5771
Passcode: 624667
One tap mobile:
+16692545252,,1600725771#,,,,*624667# U.S. (San Jose)
+16468287666,,1600725771#,,,,*624667# U.S. (New York)
Dial by your location:
+1 669 254 5252 U.S. (San Jose)
+1 646 828 7666 U.S. (New York)
+1 669 216 1590 U.S. (San Jose)
+1 551 285 1373 U.S.
Meeting ID: 160 072 5771
Passcode: 624667
Find your local number: https://fcc-gov.zoomgov.com/u/adlrIfZWcR

Federal Communications Commission.

Troy Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2022–12374 Filed 6–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. 211 0144]

Buckeye/Magellan; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 11, 2022.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Buckeye/Magellan; File No. 211 0144'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Terry Thomas (202–326–3218), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 11, 2022. Write ''Buckeye/Magellan; File No. 211 0144'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Buckeye/Magellan; File No. 211 0144'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive

information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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

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

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from IFM Global Infrastructure Fund, Buckeye Partners, L.P. (''Buckeye'') and Magellan Midstream Partners, L.P. (''Magellan'') (collectively, the ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Buckeye's proposed acquisition from Magellan of 26 light petroleum product (''LPP'') terminals, located primarily in the southeastern United States.

The Commission's Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for terminaling services for all LPPs, and terminaling services specifically for gasoline, in three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama.

Petroleum product terminals are critical to the efficient distribution of LPPs. Terminals generally consist of storage tanks that load fuel into tanker trucks for further delivery. Terminals receive their supply from pipelines or water vessels. Wholesale petroleum suppliers move LPPs from the terminals to retail locations and end-use customers. Terminaling services include the cluster of services related to the off-loading, temporary storage, and dispensing of LPPs into trucks.

Under the terms of the proposed Decision and Order (''Order'') included in the Consent Agreement, Buckeye must divest all of Magellan's terminals located in North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama, to U.S. Venture, Inc. (''U.S. Venture''), a financially sound buyer with a record of operating successful LPP terminals in other locations. The divestitures will effectively restore an independent terminal operator in each relevant geographic market and will thereby preserve competition in each relevant market. Further, the Commission has issued, and Respondents have agreed to comply with, an Order to Maintain Assets that requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date U.S. Venture acquires the divested assets.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Buckeye provides midstream logistics solutions, primarily consisting of pipeline transportation, storage, and throughput of LPPs, which include gasoline and distillates. Buckeye is headquartered in Houston, Texas. Buckeye owns over 115 LLP terminals which are located primarily in the Northeast and Midwest. IFM Global Infrastructure Fund is the ultimate parent entity of Buckeye.

Magellan is a publicly traded partnership that transports, stores, processes, and distributes LLPs and crude oil. Magellan operates a pipeline system and terminals in the central United States as well as terminals in the southeastern United States. Magellan is headquartered in Tulsa, Oklahoma. In 2020, Magellan's revenues from transportation and terminals were $1.8 billion.

III. The Proposed Acquisition

Pursuant to an Equity Purchase Agreement dated June 9, 2021, Buckeye will acquire 26 LLP terminals from Magellan for approximately $435 million (the ''Acquisition''). The terminals are located in Alabama, Georgia, Missouri, North Carolina, South Carolina, Tennessee, and Virginia.

IV. The Relevant Markets

The Commission's Complaint alleges that the relevant service markets in which to analyze the Acquisition is terminaling services for LPPs and terminaling services for gasoline specifically. Refiners, independent traders, and fuel marketers require a means to receive and store bulk quantities of LLPs and to deliver these products into tanker trucks, whether for their own use or for their customers. No cost-effective alternatives to terminaling services serve these functions. To provide terminaling services for gasoline, terminals generally must have specialized equipment, including vapor recovery units, tanks with internal floating roofs, and the ability to blend gasoline with ethanol. While gasoline-capable storage tanks may also handle distillates, the reverse is generally not possible without added expense, due to the more stringent regulatory requirements for the storage and handling of gasoline. Because storing and handling gasoline requires different tanks and other infrastructure, a narrower terminaling market also exists for terminaling services specifically for gasoline.

The Commission's Complaint alleges three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama. The area that a particular terminal can serve is limited by several factors, including the density of retail outlets served from the terminal, trucking costs relating to labor and fuel, driving times and distances, loading and waiting times at the terminal, and the relative price differences of LPPs offered at alternative terminals.

The Acquisition would likely substantially lessen competition in each local market. In North Augusta, Buckeye and Magellan are two of only three firms that offer terminaling services for LPPs and for gasoline. The markets are highly concentrated with the significant increase in concentration giving rise to a presumption of enhanced market power post-Acquisition. In Spartanburg, as measured by LPP capacity, Buckeye owns the largest terminal and Magellan owns the second largest. The Acquisition would result in highly concentrated markets for LPP and gasoline terminaling services with a change in concentration giving rise to a presumption of enhanced market power. In Montgomery, the Acquisition would reduce the number of terminal service operators from six to five, resulting in a moderately concentrated market post-Acquisition, and would also reduce the number of gasoline terminal operators from five to four, resulting in a highly concentrated market post-Acquisition. Moreover, Buckeye and Magellan are two of few independent gasoline terminal operators in Montgomery, who have little or no refining or marketing activities that can be supported by their terminal operations. The Acquisition would leave as few as two independent gasoline terminal operators in Montgomery and limit options for third parties to access independent terminaling services providers in that market.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal and the time required to design, build, and permit a new facility.

V. The Proposed Order and the Order To Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Acquisition's likely anticompetitive effects alleged in the Commission's Complaint by requiring Buckeye to divest the Magellan terminals and all associated assets (the ''Terminal Divestiture Assets'') in North Augusta, Spartanburg, and Montgomery to U.S. Venture. The proposed Order ensures that U.S. Venture or any other acquirer can operate the terminals in a manner equivalent in all material respects to the manner in which Magellan operated those businesses prior to the Acquisition.

U.S. Venture is a privately held company that was founded in 1951 and currently has a number of divisions, including U.S. Oil. U.S. Oil will be responsible for operating the divested terminals. U.S. Oil owns and operates 26 terminals in Iowa, Michigan, Indiana, Wisconsin, and Texas serving retail customers at 11 locations. U.S. Oil does not have any refined products terminals in the southeastern United States.

The proposed Order requires Buckeye to divest the Terminal Divestiture Assets no later than 10 days after Buckeye and Magellan consummate the Acquisition.

The proposed Order and the Order to Maintain Assets contain additional provisions designed to ensure the effectiveness of the relief. Both the proposed Order and the Order to Maintain Assets require Respondents to maintain the Terminal Divestiture Assets' full economic viability, marketability, and competitiveness until the divestitures are completed and to help facilitate the transfer of the Terminal Divestiture Assets to U.S. Venture.

In addition to requiring divestiture of the Terminal Divestiture Assets, the proposed Order requires Buckeye to seek prior approval from the Commission before acquiring any LPP terminal (including the divested terminals) within a 60-mile radius of the Terminal Divestiture Assets because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Acquisition and may fall below the Hart-Scott-Rodino Act premerger notification thresholds. The proposed Order further requires U.S. Venture to obtain prior approval from the Commission for a period of three years before transferring any of the divested assets to any buyer, and for a period of seven additional years to any buyer with an interest in any LLP terminal in any of the three relevant geographic markets.

Finally, the proposed Order appoints The Claro Group as an independent third-party monitor to oversee the Respondents' compliance with the requirements of the proposed Order. The Claro Group has previous experience serving as a monitor for the Commission in matters relating to natural gas pipelines and retail gasoline outlets.

The purpose of this analysis is to facilitate public comment on the proposed Order, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–12430 Filed 6–8–22; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Nominations for the Physician-Focused Payment Model Technical Advisory Committee

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Medicare Access and CHIP Reauthorization Act of 2015 established the Physician-Focused Payment Model Technical Advisory Committee (PTAC) to provide comments and recommendations to the Secretary of Health and Human Services on physician payment models and gave the Comptroller General responsibility for appointing its members. GAO is now accepting nominations of individuals for this committee.

DATES: Letters of nomination and resumes should be submitted no later than July 11, 2022, to ensure adequate opportunity for review and consideration of nominees prior to appointment. Appointments will be made in October 2022.

ADDRESSES: Submit letters of nomination and resumes to *PTACcommittee@gao.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Giusto at (202) 512–8268 or *giustog@gao.gov* if you do not receive an acknowledgement within a week of submission or you need additional information. For general information, contact GAO's Office of Public Affairs at (202) 512–4800.

Authority: Sec. 101(e), Public Law 114–10, 129 Stat. 87, 115 (2015).

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2022–12447 Filed 6–8–22; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''Diagnostic Centers of Excellence: Partnerships to Improve Diagnostic Safety and Quality (R18).'' This SEP meeting will be closed to the public.

DATES: July 14–15, 2022

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''Diagnostic Centers of Excellence: Partnerships to Improve Diagnostic Safety and Quality (R18)'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 6, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–12433 Filed 6–8–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0079]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment.

DATES: The meeting will be held on June 17, 2022, from 10:00 a.m. to 3:30 p.m., EDT, and June 18, 2022, from 10:00 a.m. to 4:00 p.m., EDT (times subject to change). The meeting will be webcast live via the World Wide Web. Written comments must be received on or before June 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0079, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027, Attn: June 17–18, 2022, ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027; Telephone: (404) 639–8367; Email: *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 41 CFR 102–3.150(b), less than 15 calendar days' notice is being given for this meeting due to the exceptional circumstances of the COVID–19 pandemic and rapidly evolving COVID–19 vaccine development and regulatory processes. The Secretary of Health and Human Services has determined that COVID–19 is a Public Health Emergency. A notice of this ACIP meeting has also been posted on CDC's ACIP website at: *https://www.cdc.gov/vaccines/acip/index.html.* In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the CDC Director and appear on CDC immunization schedules must be covered by applicable health plans.

Matters to be Considered: The agenda will include discussions on the use of COVID–19 pediatric vaccines. A recommendation vote(s) is scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda, visit *https://www.cdc.gov/vaccines/acip/meetings/index.html.* The meeting will be webcast live via the World Wide Web; for more information on ACIP, visit the ACIP website: *https://www.cdc.gov/vaccines/acip/index.html.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display.

CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate or near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: The docket will be opened to receive written comments on June 9, 2022. Written comments must be received on or before June 21, 2022.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes, including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the June 17–18, 2022, ACIP meeting must submit a request at *https://www.cdc.gov/vaccines/acip/meetings/index.html* no later than 11:59 p.m., EDT, June 15, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email on June 16, 2022. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to three minutes, and each speaker may speak only once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–12577 Filed 6–7–22; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10387, CMS–10573 and CMS–10106]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Minimum Data Set 3.0 Nursing Home and Swing Bed Prospective Payment System (PPS) For the collection of data related to the Patient Driven Payment Model and the Skilled Nursing Facility Quality Reporting Program (QRP); *Use:* We are requesting to implement the MDS 3.0 v1.17.2 from Oct 1, 2020 to Oct 1, 2023. On May 15, 2020, in response to State Medicaid Agency and stakeholder requests, we updated the MDS 3.0 item sets to version 1.17.2. The changes in this version will allow State Medicaid Agencies to collect Patient Driven Payment Model (PDPM) payment codes and thereby inform their future payment models. Calculation of the PDPM payment code on OBRA assessment is not a federal requirement. These item set changes do not reflect any change in burden from the previous version, MDS 3.0 v1.17.1.

CMS uses the MDS 3.0 PPS Item Set to collect the data used to reimburse skilled nursing facilities for SNF-level care furnished to Medicare beneficiaries and to collect information for quality measures and standardized patient assessment data under the SNF QRP. *Form Number:* CMS–10387 (OMB control number: 0938–1140); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,471; *Total Annual Responses:* 4,905,042; *Total Annual*

Hours: 4,169,286. (For policy questions regarding this collection contact Heidi Magladry at 410–786–6034).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reform of Requirements for Long-Term Care Facilities; *Use:* According to our data, as of April 2, 2021, there were 15,372 LTC facilities in the United States. These facilities are currently caring for 1,290,290 residents. Since the number of LTC facilities and residents varies yearly, for the purposes of this analysis, we utilized estimates of 15,600 for LTC facilities and 1.3 million residents. LTC facilities include skilled nursing facilities (SNFs) as defined in section 1819(a) of the Social Security Act in the Medicare program and nursing facilities (NFs) as defined in 1919(a) of the Act in the Medicaid program. SNFs and NFs provide skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. In addition, NFs provide health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases. SNFs and NFs must care for their residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and must provide to residents services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care, which describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met and is updated periodically.

Under the authority of sections 1819 and 1919 of the Act, the Secretary proposed to reform the requirements that SNFs and NFs must meet to participate in the Medicare & Medicaid programs. These requirements would be set forth in 42 CFR 483 subpart B as Requirements for LTC Care Facilities. The requirements apply to an LTC facility as an entity as well as the services furnished to each individual under the care of the LTC facility, unless a requirement is specifically limited to Medicare or to Medicaid beneficiaries. To implement these requirements, State survey agencies generally conduct surveys of LTC facilities to determine whether or not they are complying with the requirements.

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements (ICRs) for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4204(b) and 4214(d) of Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (OBRA '87) provide for a waiver of Paperwork Reduction Act (PRA) requirements for some regulations. At the time that the 2016 LTC final rule (81 FR 68688) published, we believed that this waiver still applied to those updates we made to existing requirements in part 483 subpart B that were set forth by OBRA 87. However, we acknowledged that the 2016 final rule also extensively revised many of the existing requirements in part 483 subpart B and recognized that the revisions likely created new burdens for facilities. In addition, we noted that the 2016 final rule implemented several new requirements set forth by the Affordable Care Act, which were not included in the PRA waiver. Therefore, we provided burden estimates for the new ICRs finalized in the 2016 LTC final rule set forth by the Affordable Care Act, as well as those revisions to existing requirements in part 483 subpart B that were so extensive they could be considered new ICRs in concept. For the current or 2022 information collection request (ICR), we have provided updates to the burden in the 2019 ICR, as well as provided burden estimates for all of the new ICs finalized since 2016 that were in effect as of May 2021. The ICRs and the rules they were finalized in are indicated in table below.

ICRs Associated With Each Rule

Rule name and publication date	FR citation	ICRs
Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities; Final rule (CMS–3260–F) Published October 4, 2016.	81 FR 68688	All ICRs, except as noted below.
Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency; IFC (CMS–3401–IFC) Published September 2, 2020.	85 FR 54820	Section 483.80(h)—COVID–19 Testing.
Medicare and Medicaid Programs; COVID–19 Vaccine Requirements for Long Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs–IID) Residents, Clients, and Staff); IFC (CMS–3414–IFC) (May 2021 Vaccination IFC) Published May 13, 2021.	86 FR 26306	Sections 483.80(d)(3)—COVID–19 immunizations and (g)(1)(viii)–(x).
Medicare and Medicaid Programs: CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities (86 FR 62240) (CMS–1747–F and CMS–5531–F). Published November 9, 2021.	86 FR 62240	Section 483.80(g).

The primary users of this information will be State agency surveyors, CMS, and the LTC facilities for the purposes of ensuring compliance with Medicare and Medicaid requirements as well as ensuring the quality of care provided to LTC facility residents. The ICs specified in the regulations may be used as a basis for determining whether a LTC is meeting the requirements to participate in the Medicare program. In addition, the information collected for purposes of ensuring compliance may be used to inform the data provided on CMS' Nursing Home Compare website and as such used by the public in considering nursing home selections for services. *Form Number:* CMS–10573 (OMB control number: 0938–1363); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,600; *Total Annual Responses:* 18,658,854; *Total Annual*

Hours: 29,935,899. (For policy questions regarding this collection contact Diane Corning at 410–786–8486.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Authorization to Disclose Personal Health Information; *Use:* The ''Medicare Authorization to Disclose Personal Health Information'' will be used by Medicare beneficiaries to authorize Medicare to disclose their protected health information to a third party. Medicare beneficiaries can submit the Medicare Authorization to Disclose Personal Health Information electronically at *Medicare.gov*. Beneficiaries may also submit the Medicare Authorization to Disclose Personal Health Information by mailing a complete and valid authorization form to Medicare. Beneficiaries can submit the Medicare Authorization to Disclose Personal Health Information verbally over the phone by calling Medicare. *Form Number:* CMS–10106 (OMB control number: 0938–0930); *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 250,000. (For policy questions regarding this collection contact Sam Jenkins at 410–786–3261.)

Dated: June 3, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–12378 Filed 6–8–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–R–284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transformed—Medicaid Statistical Information System (T–MSIS); *Use:* The data reported in T–MSIS are used by federal, state, and local officials, as well as by private researchers and corporations to monitor past and projected future trends in the Medicaid program. The data provide the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. The information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to Congress. The collected data are also crucial to our actuarial forecasts. *Form Number:* CMS–R–284 (OMB control number: 0938–0345); *Frequency:* Quarterly and monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 684; *Total Annual Hours:* 6,480. (For policy questions regarding this collection contact Connie Gibson at 410–786–0755.)

Dated: June 3, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–12386 Filed 6–8–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10328]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow

60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 8, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10328—Medicare Self-Referral Disclosure Protocol

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Self-Referral Disclosure Protocol; *Use:* Section 6409 of the ACA requires the Secretary to establish a voluntary self-disclosure process that allows providers of services and suppliers to self-disclose actual or potential violations of section 1877 of the Act. The SRDP is a voluntary self-disclosure process that allows providers of services and suppliers to disclose actual or potential violations of section 1877 of the Act. For purposes of the SRDP, a person submitting a disclosure to the SRDP will be referred to as a ''disclosing party.'' CMS analyzes the disclosed conduct to determine compliance with section 1877 of the Act and the application of the exceptions to the physician self-referral prohibition.

Specifically, under the proposal a physician practice disclosing group practice noncompliance will submit an SRDP form consisting of the following components: (1) the SRDP Disclosure Form, (2) a single Group Practice Information Form covering all the physicians in the practice who made prohibited referrals to the practice, and (3) a Financial Analysis Worksheet. All other entities will continue to submit disclosures using the SRDP Disclosure Form, separate Physician Information Forms for each physician covered in the self-disclosure, and a Financial Analysis Worksheet. *Form Number:* CMS–10328 (OMB control number: 0938–1106); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 100; *Total Annual Responses:* 200; *Total Annual Hours:* 5,000. (For policy questions regarding this collection contact Matthew Edgar at 410–786–0698.)

Dated: June 3, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–12379 Filed 6–8–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0174]

Submission for OMB Review; Native Employment Works (NEW) Plan Guidance and NEW Program Report

AGENCY: Division of Tribal TANF Management, Office of Family Assistance, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form OFA–0086: NEW Plan Guidance and NEW Program Report (OMB #0970–0174, expiration 8/31/2022). There are minor changes requested to both documents.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The NEW Program Plan Guidance documents specify the information needed to complete a NEW program plan and explain the process for plan submission every third year and to complete the annual program report. The program plan is the application for NEW program funding and documents how the grantee will carry out its NEW

program. ACF proposes a change in how draft plans are submitted. The program report provides HHS, Congress, and grantees information to document and assess the activities and accomplishments of the NEW program. ACF proposes to extend data collection with revisions that clarify that programs should not count more than once individuals who meet multiple categories; for example, persons age 20 are both youth and adults, but they should be counted as one or the other, not both.

Respondents: Indian tribes and tribal coalitions that operate NEW programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents (over 3 yrs.)	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
NEW Program Plan Guidance	40	[1].333	29	386
NEW Program Report	40	1	15	600
Total Estimated Annual Burden				986

[1] We have used .333 responses per year to represent one submission of the NEW Program Plan Guidance during the 3-year approval period.

Authority: 42 U.S.C. 612.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–12424 Filed 6–8–22; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Maternal and Child Health Bureau Performance Measures for Discretionary Grant Information System (DGIS), OMB No. 0915–0298—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than July 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the acting HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal and Child Health Bureau (MCHB) Performance Measures for Discretionary Grant Information System (DGIS), OMB No. 0915–0298—Revision.

Abstract: Approval from OMB is sought to implement minor revisions to the MCHB Performance Measures for DGIS. Most of these measures are specific to certain types of programs and are not required of all grantees. The measures are categorized by domain (Adolescent Health, Capacity Building, Child Health, Children with Special Health Care Needs, Lifecourse/Crosscutting, Maternal/Women Health, and Perinatal/Infant Health), in addition to some program-specific measures. Grant programs are assigned domains based on their activities and individual grantees respond to only a limited number of performance measures that are relevant to their specific program.

HRSA intends to change the numbering sequence of the DGIS forms in an approach different from what was outlined in the **Federal Register** notice (87 FR 3313) published on January 21, 2022. The approach outlined in the January 21, 2022, notice provided for the re-use of form numbers by reordering the form sequence to accommodate the forms being removed and added. After further consideration, HRSA intends to retire the number associated with the six DGIS forms being removed and give the new DGIS Training form the next number in the numbering sequence (Training Form 15, which was previously labeled as Training Form 14 in the January 21, 2022, notice). This streamlined approach will prevent confusion among grantees and HRSA when referencing the forms after they are updated in DGIS.

No additional forms are proposed to be added, removed, or revised beyond what was specified in the January 21, 2022, notice. As noted in the January 21, 2022, notice, HRSA is making the following changes to the current information collection for MCHB DGIS to more closely align data collection forms with the program activities:

Removing the following existing forms: Core 1 (Grant Impact), Capacity Building 2 (Technical Assistance), Capacity Building 7 (Direct Annual Access to MCH Data), Training Form 13 (Diverse Adolescent Involvement (Leadership Education in Adolescent Health Program –specific)), Financial Form 2 (Project Funding Profile), and Financial Form 4 (Project Budget and Expenditures);

Adding the following new forms: Training Form 15 (Consultation and Training for Mental and Behavioral Health) and Leadership, Education, and Advancement in Undergraduate Pathways Training Program Trainee Information Form. The title of Training Form 15 was changed from ''Teleconsultation'' to ''Consultation'' to acknowledge that some programs that report on this form may also have an in-person consultation component. Therefore, the form was updated to capture both teleconsults and in-person consults and the title was adjusted to represent this change;

Revising the following existing forms: F2F (Family to Family Form 1), Financial Form 1 (MCHB Project Budget Details), Financial Form 4 (new name:

Maternal & Child Health Discretionary Grant Project Abstract), MCH Training Program Data Forms, Core 3 (Health Equity), Financial Form 3 (Budget Details by Types of Individuals Served), Financial Form 5 (Number of Individuals Served (Unduplicated)), and Financial Form 6 (Project Abstract); and

Moving the following form to a new category: Core 2 (Quality Improvement) will become Capacity Building 8 (Quality Improvement). Moving this form out of the Core category and into the Capacity Building category will allow HRSA to assign this form to only applicable grantees. Note that in the January 21, 2022, notice, Core 2 was proposed to become Capacity Building 4, however, due to the decision to change the numbering sequence in the DGIS, the form will now use the next number in the numbering sequence (following Capacity Building 7).

Non-substantive revisions also include updates to terminology, goals, benchmark data sources, and significance sections included in the measures' detail sheets. A performance measure detail sheet defines and describes each performance measure. Forms and detail sheets showing the proposed revisions are available upon request.

In response to the notice published on January 21, 2022, HRSA received six requests to view the proposed revisions and six public comments. One comment, with which the Department agrees, conveyed support for the proposed DGIS form updates and relayed that it will improve their organization's ability to understand trainees with relation to gender diversity and decrease the burden of completing DGIS reporting. Another comment also conveyed support for removing several forms to alleviate reporting burden, with which the Department agrees. In addition, this same commenter supported the proposal to align the age ranges across DGIS measures, specifically between Form 5 and Form 3, with which the Department also agrees. This commenter also relayed concern over the administrative burden required to count and report specialty providers by specialty type for trainings and requested clearer guidance for how to accurately count provider types in Training Form 15 (referenced as Training Form 14 in the January 21, 2022, notice). Finally, the commenter relayed concern that requiring providers to submit data to HRSA (for purposes of Training Form 15) could preclude providers from participating in the program given their limited resources. The Department appreciates the challenges of providers reporting data; however, this information is critical for HRSA to be able to track program impact.

Similar comments regarding count of providers by specialty type were received by a third commenter, with a focus on the difficulty to collect this data related to depression training and additional burden that is created when the count is required to be de-duplicated by provider type. The Department acknowledges counting and reporting specialty providers by specialty type requires more effort than counting and reporting providers without specialty type. However, provider specialty type is crucial to HRSA's ability to measure programmatic reach and impact, which is used to inform programmatic and policy decision making. To provide better guidance, the form has been updated to include ''non-specialty'' to the applicable sections of the tables to assist with reporting and the Department will ensure Training Form 15 is programmed into DGIS in such a way that it is clearer to the grantee that any provider type not listed should be counted in an ''Other'' category. Additionally, grantees are not expected to de-duplicate training counts by provider type. If grantees do not have information on the type of providers who attended a training, it is acceptable to place counts under ''Other.''

Additional comments received by a fourth commenter on Training Form 15 included feedback regarding the difficulty for their teleconsultation line staff to track and report the number of enrolled providers who may be eligible to call the line; the need for clarification on how a care coordinator/patient navigator is defined; the need for clarification on what ''teleconsultation'' specifically entails and what level of provider needs to provide this service; the need for clarification around specific terms, including: polysubstance use, disruptive, impulse-control, conduct disorders as well as co-occurring mental and substance use disorders; a request for HRSA to make the individuals served screening-level measure optional for Maternal Depression and Related Behavioral Disorders (MDRBD) grantees similar to Pediatric Mental Health Care Access program (PMHCA) grantees; feedback that depending on the specific modality used to obtain practice-level screening data, the numerator and denominator time frame may not fully align with the federal fiscal year; and a request for clarification regarding reporting the number of referrals given with a suggestion that HRSA define this measure not as the number of referrals provided, but rather as the number of referrals services/supports that could be offered.

In response to these comments, the Department has made the following updates to Training Form 15: ''if applicable'' has been added in the first table requesting the number of providers enrolled AND participating; consultation language has been clarified by changing ''teleconsultation'' to ''consultation,'' which includes both teleconsultation and in-person consultation. If a call/contact includes both consultation and care coordination support the contact should be reported in the ''Both'' category; polysubstance use and co-occurring mental and substance use disorders have been removed from the list of condition(s) to report why providers contact the program for consultation; and the individuals served screening-level measure now reflects as optional for MDRBD grantees similar to PMHCA grantees.

The Department wishes to clarify that family visitors and doulas should be reported as Care Coordinators/Patient Navigators if that is the role they are filling and reporting the number of referrals given is solely for referral and treatment recommendations for providers who contact the program. Grantees should be able to collect this information at the time the provider contacts the program and no updates have been made to the form regarding this question.

This commenter also provided feedback on the Core Health Equity Form, Women and Maternal Health (WMH) 1, 2, and 4, and Financial Forms 2, 3, and 5 (now Financial Forms 3, 5, and 7). While the commenter welcomes the revisions of the Core Health Equity form, they clarified that specific health equity goals and objectives being pursued may be overarching and aligned with organizational equity aims, and as such, progress toward achieving them may be hard to quantify and/or specify from a programmatic-level.

The Department recognizes there may be some overlap with larger organizational aims, however, health equity is a focus of MCHB programs and it is necessary to capture how grantees are advancing health equity. With regards to WMH 1 and 2, the commenter provided feedback that it remains difficult to specify/stratify training counts specific to pregnancy and postpartum care given that most training is specific to the perinatal period. As a result, grantees whose focus spans the entirety of the perinatal period like MDRBD grantees would benefit from

additional reporting instruction on how best to fill out these forms and whether to include training counts only in Training Form 15 or in WMH 1 and 2 forms as well. The Department recognizes that some programs may span pregnancy and postpartum periods, however, there is a need to capture prenatal care (WMH 1) in the first trimester and timely postpartum visit (WMH 2) separately to demonstrate each of these measures are improving.

The Department wishes to clarify that for programs with trainings that may cover pregnancy and post-partum care, these trainings should be counted under both WMH 1 and WMH2. These trainings however should include content on timely prenatal and timely postpartum care.

Finally, the commenter requested HRSA consider making the Tier 4 measure for WMH 4 optional given reporting difficulty and the amount of time it would take to enact needed electronic medical record modifications and reporting protocols to obtain treatment/referral information; any immediate information provided in this area would require manual tracking. After further consideration, the Tier 4 measure for WMH 4 has been updated to reflect its optional status, bringing it into alignment with the updates made to Training Form 15. Additional comments received by a final commenter on Training Form 15 included requested clarification on the definition of ''enrolled provider,'' guidance for how to classify the reason for provider contact, requested clarification on how to count the number and types of providers trained, an example for what constitutes ''treatment strategies,'' and a specific definition for the term ''treatment.''

As a result of this feedback, the form has been updated to include a footnote which clarifies that an ''Enrolled'' provider is one who is currently enrolled in the program even if initial enrollment occurred prior to the current reporting period. With regards to classifying the reason for a provider contact, the Department clarifies that the intent is to not limit responses to specific diagnoses for this question. If a specific diagnosis can be captured at the time of the call, it should be captured as such. If it cannot, and the reason(s) for the call are not included in the provided list, the grantee should capture the reason for the call under the response option titled, ''Other (please specify).'' In addition, the form has been updated to state ''Treatment modality-focused trainings'' instead of ''Treatment strategies-related trainings.'' Finally, recognizing each grantee may define ''Treatment'' differently, the Department clarifies that ''Treatment'' is broadly defined for both PMHCA and MDRBD programs as, ''the provision, coordination, or management of health care and related services among health care providers.''

Two additional commenters provided feedback on the Family-to-Family (F2F) Form 1. The first commenter provided the following: a recommendation that parents of children and youth with special health care needs be specified in the definition of the numerator as they are in other related statements in the document; concern about the removal of the details ''family centered, comprehensive, and coordinated system'' in the benchmark data sources replaced with ''a system of care,'' with a recommendation of listing additional other benchmarks here, such as Healthy People 2030 MICH–19; language that states F2F services are either one-to-one or through group training and events, with a recommendation to replace ''one-to-one'' with ''individual total number of families receiving one-to-one services (including small group individualized assistance); use of a Likert scale when capturing the percentage of one-to-one services and trainings provided by topic, as well as when capturing the percentage of services and trainings to professionals/providers provided by topic; use of the term ''American Indian or Alaska Native'' instead of ''tribal organization;'' and concern about the removal of four subcategories that were previously used to report the types of services/trainings provided to families, and removal of references to the six core outcomes in the form.

After considering the feedback, the measure's numerator has been revised to state: ''The total number of families of children and youth with special health care needs receiving one-to-one services and training from Family-To-Family Health Information Centers.'' This revision reflects how MCHB tracks and reports program impact.

Question 1 has been revised to include the phrase, ''small group individualized assistance.'' After considering the commenter's use of Likert scales when capturing the percentage of one-to-one services and trainings provided by topic, as well as when capturing the percentage of services and trainings to professionals/providers provided by topic, these questions have been removed from the form. After further consideration, the four subcategories that were previously used to report the types of services/trainings provided to families has been added back to the form. Finally, the form has been updated to reflect ''American Indian or Alaska Native'' instead of ''tribal organization.'' This revision aligns all of the selections in table 2c of the F2F form to be population focused and not a mix of populations and organization.

With regards to the use of MICH–19 in addition to the benchmark data source of MICH–20, the Department intends to proceed with the use of MICH–20, as ''systems of care'' includes having a medical home. While the title of the objective has changed, the objective of receiving care in a system of care is still the same. Finally, with regards to the removal of references to the six core outcomes in the form: Despite removal from the form, the six core outcomes remain foundational for all work to improve systems of care. The Department intends to proceed with removal and would like to reiterate that grantees can report on the six core outcomes in their annual progress report.

The second commenter on the F2F form mirrored those of the first and no additional consideration was necessary.

Need and Proposed Use of the Information: The performance data collected through the DGIS serves several purposes, including grantee monitoring, program planning, performance reporting, and the ability to demonstrate alignment between MCHB discretionary programs and the Title V MCH Services Block Grant program. This revision will facilitate more efficient and accurate reporting of information related to Capacity Building activities, Financial and Demographic data, and Training activities.

Likely Respondents: The grantees for Maternal and Child Health Bureau Discretionary Grant Programs.

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	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
Grant Report	700	1	700	36	25,200

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. 2022–12391 Filed 6–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request: HRSA Ryan White HIV/AIDS Program Part F AIDS Education and Training Center Program Evaluation Activities, OMB No. 0915–0281—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 11, 2022.

ADDRESSES: Submit your comments by email 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:

Information Collection Request Title: HRSA Ryan White HIV/AIDS Program Part F AIDS Education and Training Center Evaluation Activities, OMB No. 0915–0281—Extension.

Abstract: The Ryan White HIV/AIDS Program's (RWHAP) Part F AIDS Education and Training Center (AETC) Program, authorized under Title XXVI of the Public Health Service Act, supports a network of regional and national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating people with HIV. The RWHAP AETC Program's purpose is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage people with HIV.

The RWHAP AETC Program recipients gather data on the training activities they conduct using two data collection instruments. The Event Record (ER) gathers information about each training activity, including training programs, individual clinical consultations, group clinical consultations, and technical assistance events. Information on the people trained, the length of training, the content and level of the training, and collaborations with other organizations is also collected. The Participant Information Form (PIF) collects information from each of the training participants, including demographics, profession, the types of HIV services they provide, and the characteristics of the patient population they serve. The RWHAP AETC Program recipients are required to report data on the training activities and trainees to HRSA once a year.

HRSA is requesting an extension of the current ER and PIF with minor changes. To more accurately capture the length of a training event, RWHAP AETC trainers will be asked to report the event's end date in addition to the start date. Additionally, if an event was not supported by RWHAP AETC base grant funding, respondents will be able to skip three subsequent questions on the ER that are not applicable. An update was made to the wording of a question on funding sources for clarity (*i.e.,* AETC programmatic funding was changed to AETC Base Grant funding). The skip logic in the response options was also modified to improve reporting. Respondents will also have the option to report multiple clinic and health professional program identification numbers to reflect multiple affiliations on the ER. Additional options were added for multiple questions in the ER to allow for more complete responses (*e.g.* an ''other'' response option was added to two questions; and response options such as trauma-informed care, gender affirming care, transgender/non-binary/other gender, people experiencing homelessness, and people with justice system involvement were added to capture relevant event topics). In addition to changes on the ER, minor revisions were made to the response options for multiple questions on the PIF to improve clarity (*e.g.,* ''Substance Abuse'' was changed to ''Substance Use Disorder''). Additionally, the question and response options on gender were updated. Lastly, options were added to multiple questions to allow for more complete responses. For example, questions on gender, racial and ethnic identity now include ''Choose Not to Disclose'' as response options.

A 60-day notice published in the **Federal Register**, Volume 87. No. 31, FR pp. 8593–8594 (February 15, 2022). There were two public comments proposing minor revisions to the ER and PIF forms. Most of the public comments were accepted. Comments were rejected if they were out of scope, did not make sense in the context of the question, or could be addressed by an ''other'' response option. In addition to the comments, two RWHAP AETC Programs requested copies of the revised PIF and ER forms, but did not provide any comments.

Need and Proposed Use of the Information: HRSA uses the data collected when conducting RWHAP AETC programmatic assessments to determine future program needs. These data allow HRSA to identify where gaps exist in training HIV professionals as well as to measure whether training events are meeting the goals of the National HIV/AIDS Strategy.

Likely Respondents: RWHAP AETC trainees complete the PIF either at the start or at the conclusion of an event. Trainers complete an ER for each training event they conduct during the year. In addition, each regional RWHAP AETC (eight total) and the RWHAP AETC National Coordinating Resource Center compile these data once a year for submission to HRSA.

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	Average burden per response (in hours)	Total burden hours
Participant Information Form	164,385	1	0.167	27,452
Event Record	12,980	1	0.200	2,596
Combined Data Set	8	1	32.000	256
	177,373	.....	.....	30,304

The burden estimate for this request is for 30,304 hours, a large increase of 25,872 hours from the previous estimate of 4,432 hours. This surge is mostly due to the increase of estimated trainees attending the training events, from 61,288 to 164,385 participants, and an increase in training events, from 10,522 to 12,980 events. The burden estimate in submitting the data set also increased from 4.5 to 32 hours due to the larger amount of data requested.

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. 2022–12469 Filed 6–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of the President's Council on Sports, Fitness & Nutrition's Charter

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) is hereby giving notice that the charter for the President's Council on Sports, Fitness & Nutrition (hereafter referred to as the Council) has been renewed.

DATES: On May 16, 2022, the Secretary of Health and Human Services approved the renewal of the Council's charter. The new charter was executed and filed with the appropriate Congressional committees and the Library of Congress on May 17, 2022. The renewal of the Council's charter gives the Council authorization to operate until May 15, 2024.

ADDRESSES: A copy of the Council's charter is available on the Council's website at: *https://health.gov/our-work/nutrition-physical-activity/presidents-council/about-pcsfn/executive-order.*

FOR FURTHER INFORMATION CONTACT: Rachel Fisher, Designated Federal Officer, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion; 1101 Wootton Parkway, Suite 420, Rockville, Maryland 20852, Phone (240) 453–8257.

Additional information is available on the Council's website at: *https://health.gov/our-work/nutrition-physical-activity/presidents-council.*

SUPPLEMENTARY INFORMATION: Functioning as a federal advisory committee, the Council is governed by the provisions of the Federal Advisory Committee Act (FACA). FACA stipulates that the charter for a federal advisory committee must be renewed every two years. The most recent Executive Order 14048, dated September 30, 2021, provides for the work of the Council to include a focus on expanding national awareness of the importance of mental health as it pertains to physical fitness and nutrition. To reflect the changes to the Council's scope under Executive Order 14048, the Charter has been amended and renewed.

The Council is charged with advising the President, through the Secretary of Health and Human Services (Secretary), concerning progress made in carrying out the provisions of Executive Order 13265, as amended, as further amended by Executive Order 14048, which aims to expand and encourage youth sports participation and to promote the overall physical fitness, health, and nutrition of all Americans. The Council promotes this goal through external outreach, raising public awareness, and recommending to the President, through the Secretary, actions to accelerate such progress. Executive Order 14048 directs the Secretary to carry out the responsibilities for public health and human services, and to continue to promulgate a national strategy (the National Youth Sports Strategy) to expand children's participation in youth sports, encourage regular physical activity, including active play, and promote good nutrition for all Americans. Executive Order 14048 also directs the Secretary to expand national awareness of the importance of mental health as it pertains to physical fitness and nutrition and to share information about the positive effects of physical activity on mental health, particularly as it relates to children and adolescents, to combat the negative mental health impacts of the coronavirus disease 2019 (COVID–19) pandemic.

Paul Reed,

Rear Admiral (L), U.S. Public Health Services, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

[FR Doc. 2022–12436 Filed 6–8–22; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Research Infrastructure Development for Interdisciplinary Aging Studies.

Date: June 29, 2022.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bita Nakhai, Ph.D., Chief, Basic and Translational Sciences Section (BTSS), Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12418 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00) Special Emphasis Panel.

Date: July 21–22, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12417 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of 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: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R33).

Date: July 6, 2022.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Diversity Training Grants.

Date: July 7, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Sun Saret, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 435–0270, *sun.saret@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Member Conflict Institutional Training T32-Awards.

Date: July 8, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 402–9394, *fungai.chanetsa@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Phase IIB Small Market & Bridge Awards (R44).

Date: July 12, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute,

Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; EIA R35 Grant Review.

Date: July 14, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Member Conflict Mentored Career Development K-Awards.

Date: July 15, 2022.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 402–9394, *fungai.chanetsa@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Enabling Technologies for HLBS Research.

Date: July 19, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R38 StARR Review Meeting.

Date: July 20, 2022.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 827–7953, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Product Definition.

Date: July 20, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Program Project Applications (P01).

Date: July 26, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kazuyo Kegan, AB, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 402–1334, *kazuyo.kegan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Product Definition.

Date: July 28, 2022.

Time: 10:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office of Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Special Emphasis Panel-Opportunities for Collaborative Research at the NIH Clinical Center.

Date: July 28, 2022.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKL1, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 402–9394, *fungai.chanetsa@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 3, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12377 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; National Center for Advancing Translation Sciences Emphasis Panel.

Date: July 7, 2022.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Rockledge Drive, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Rockledge Drive, Room 1037, Bethesda, MD 20892, (301) 594–7319, *khanr2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12443 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.
Date: June 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: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.
Date: July 7–8, 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: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4152, MSC 7846, Bethesda, MD 20892, (301) 827–6009, *lin.reigh-yi@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Immunology.
Date: July 13–14, 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: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, *drammehbs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology and Urology.
Date: July 13, 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: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Anti-Infective Therapeutics.
Date: July 13–14, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, *marcus.ferrone@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.
Date: July 14, 2022.
Time: 10:00 a.m. to 5:00 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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Immunology.
Date: July 14–15, 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: Velasco Cimica, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Eukaryotic Pathogen Drug Discovery and Resistance.
Date: July 14, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: 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; Member Conflict: Topics in Environmental Toxicology.
Date: July 14, 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: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–5000, *juana2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology and Development of Eye.
Date: July 14, 2022.
Time: 2:00 p.m. to 5:00 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: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@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)

Miguelina Perez,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12416 Filed 6–8–22; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–21–356 Swine Center Review.
Date: June 30, 2022.
Time: 11:00 a.m. to 1:00 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: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892 (301) 435–0912, *katherine.malinda@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.
Date: July 7–8, 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: Mohammed F A Elfaramawi, Ph.D., MD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007F, Bethesda, MD 20892, (301) 402–6746, *elfaramawimf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Risks, Prevention and Health Behavior.
Date: July 7–8, 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: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Disease Management, Risk Prevention and Health Behavior Change.
Date: July 7–8, 2022.
Time: 9:30 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: Izabella Zandberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0359, *izabella.zandberg@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–NR–22–002: Advancing Integrated Models (AIM) of Care to Improve Maternal Health Outcomes among Women Who Experience Persistent Disparities.
Date: July 12, 2022.
Time: 9:30 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: Hoa Thi Vo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002B2, Bethesda, MD 20892, (301) 594–0776, *voht@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Vaccines Against Microbial Diseases.
Date: July 15, 2022.
Time: 10:00 a.m. to 5:00 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892 301–996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group HIV Molecular Virology, Cell Biology, and Drug Development Study Section.
Date: July 18–19, 2022.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel Small Business: Immune responses and Vaccines to Microbial Infections.
Date: July 19, 2022.
Time: 9:00 a.m. to 9:30 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: Subhamoy Pal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0926, *subhamoy.pal@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.
Date: July 20–21, 2022.
Time: 9:00 a.m. to 9:00 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: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814 Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group HIV Coinfections and HIV Associated Cancers Study Section.
Date: July 21, 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: Audrey O Lau, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4088, *audrey.lau@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: June 3, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12444 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Prevention of Opioid Drug Misuse and Abuse.

Date: July 22, 2022.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite #670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12465 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health And Human Development; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Chemical Synthesis Facility.
Date: July 22, 2022.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Video Assisted Meeting).
Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Biomedical Assay Laboratory.
Date: July 29, 2022.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Video Assisted Meeting).
Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: June 3, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12419 Filed 6–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2242]

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 September 7, 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–2242, 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
Terrebonne Parish, Louisiana (All Jurisdictions) **Project: 20–06–0104S Preliminary Date: June 16, 2021 and October 8, 2021**	
Terrebonne Parish Consolidated Government	Terrebonne Parish Consolidated Government Tower, 8026 Main Street, Suite 100, Houma, LA 70360.
Cleveland County, Oklahoma and Incorporated Areas **Project: 21–06–0044S Preliminary Date: February 8, 2022**	
City of Moore	City Hall, 301 North Broadway Avenue, Moore, OK 73160.
City of Oklahoma City	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.
Oklahoma County, Oklahoma and Incorporated Areas **Project: 21–06–0045S Preliminary Date: February 8, 2022**	
City of Oklahoma City	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.

[FR Doc. 2022–12385 Filed 6–8–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of October 13, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(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
Baldwin County, Georgia and Incorporated Areas Docket No.: FEMA–B–2139	
City of Milledgeville	Planning and Zoning Department, 105 East Hancock Street, Milledgeville, GA 31061.
Unincorporated Areas of Baldwin County	Baldwin County Planning and Development, 1601 North Columbia Street, Suite 200, Milledgeville, GA 31061.
Jasper County, Georgia and Incorporated Areas Docket No.: FEMA–B–2139	
City of Monticello	City Hall, 123 West Washington Street, Monticello, GA 31064.
Unincorporated Areas of Jasper County	Jasper County Courthouse, Planning and Zoning Department, 126 West Greene Street, Suite 17, Monticello, GA 31064.
Jones County, Georgia and Incorporated Areas Docket No.: FEMA–B–2139	
Unincorporated Areas of Jones County	Jones County Planning and Zoning Department, 166 Industrial Boulevard, Gray, GA 31032.
Buena Vista County, Iowa and Incorporated Areas Docket No.: FEMA–B–2033	
City of Lakeside	City Hall, 100 Ash Street, Lakeside, IA 50588.
City of Linn Gove	Community Center, 110 Weaver Street, Linn Grove, IA 51033.
City of Newell	City Hall, 207 East 2nd Street, Newell, IA 50568.
City of Sioux Rapids	City Hall, 100 Front Street, Sioux Rapids, IA 50585.
City of Storm Lake	City Hall, 620 Erie Street, Storm Lake, IA 50588.
City of Truesdale	City Hall, 120 Main Street, Truesdale, IA 50592.
Unincorporated Areas of Buena Vista County	Buena Vista Courthouse, 215 East 5th Street, Storm Lake, IA 50588.
Nicollet County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2145	
City of Courtland	City Office, 329 Main Street, Courtland, MN 56021.
City of Mankato	Intergovernmental Center, 10 Civic Center Plaza, Mankato, MN 56001.
City of North Mankato	City Hall, 1001 Belgrade Avenue, North Mankato, MN 56003.
City of Saint Peter	Municipal Building, 227 South Front Street, Saint Peter, MN 56082.
Unincorporated Areas of Nicollet County	Nicollet County Government Center, 501 South Minnesota Avenue, Saint Peter, MN 56082.
Paulding County, Ohio and Incorporated Areas Docket No.: FEMA–B–2146	
Unincorporated Areas of Paulding County	Paulding County Commissioners Office, 115 North Williams Street, Pauling, OH 45879.
Village of Antwerp	Village Hall, 118 North Main Street, Antwerp, OH 45813.
Village of Cecil	Village Hall, 301 West 3rd Street, Cecil, OH 45821.
Village of Grover Hill	Village Hall, 104 South Main Street, Grover Hill, OH 45849.
Village of Haviland	Village Hall, 201 North Vine Street, Haviland, OH 45851.
Village of Melrose	Council House, 705 State Street, Melrose, OH 45861.
Village of Oakwood	Village Hall, 228 North 1st Street, Oakwood, OH 45873.
Village of Paulding	Village Hall, 116 South Main Street, Paulding, OH 45879.
Village of Payne	Village Hall, 119 North Main Street, Payne, OH 45880.
Village of Scott	Paulding County Commissioners Office, 115 North Williams Street, Pauling, OH 45879.
Nueces County, Texas and Incorporated Areas Docket No.: FEMA–B–1603 and B–2069	
City of Agua Dulce	City Hall, 1514 2nd Street, Agua Dulce, TX 78330.
City of Aransas Pass	City Hall, 600 West Cleveland Boulevard, Aransas Pass, TX 78336.
City of Bishop	City Hall, 203 East Main Street, Bishop, TX 78343.
City of Corpus Christi	Development Services, 2406 Leopard Street, Corpus Christi, TX 78408.

Community	Community map repository address
City of Driscoll	City Hall, 133 West Dragon Street, Driscoll, TX 78351.
City of Petronila	Nueces County Courthouse, 901 Leopard Street, Corpus Christi, TX 78401.
City of Port Aransas	City Hall, 710 West Avenue A, Port Aransas, TX 78373.
City of Portland	Public Works, 1101 Moore Avenue, Portland, TX 78374.
City of Robstown	Code Enforcement Division, 101 East Main Street, Robstown, TX 78380.
Unincorporated Areas of Nueces County	Nueces County Courthouse, 901 Leopard Street, Corpus Christi, TX 78401.

[FR Doc. 2022–12380 Filed 6–8–22; 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:					
Maricopa (FEMA Docket No.: B–2213).	City of Buckeye (21–09–0404P).	The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	Apr. 22, 2022	040039
Maricopa (FEMA Docket No.: B–2213).	City of Peoria (21–09–1030P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Apr. 29, 2022	040050
Maricopa (FEMA Docket No.: B–2205).	City of Peoria (21–09–1679P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Mar. 11, 2022	040050
Maricopa (FEMA Docket No.: B–2205).	City of Phoenix (21–09–0190P).	The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Mar. 11, 2022	040051
Maricopa (FEMA Docket No.: B–2205).	Unincorporated Areas of Maricopa County (21–09–0190P).	The Honorable Jack Sellers, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Mar. 11, 2022	040037
Maricopa (FEMA Docket No.: B–2205).	Unincorporated Areas of Maricopa County (21–09–1679P).	The Honorable Jack Sellers, Chair, Board of Supervisors Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Mar. 11, 2022	040037
Santa Cruz (FEMA Docket No.: B–2224).	Unincorporated Areas of Santa Cruz County (21–09–1967P).	The Honorable Manuel Ruiz, Chair, Board of Supervisors, Santa Cruz County, 2150 North Congress Drive #119, Nogales, AZ 85621.	Santa Cruz County Flood Control District, Gabilondo-Zehentner Building, 275 Rio Rico Drive, Rio Rico, AZ 85648.	May 31, 2022	040090
Yavapai (FEMA Docket No.: B–2205).	Town of Dewey-Humboldt (21–09–0533P).	The Honorable John Hughes, Mayor, Town of Dewey-Humboldt, 2735 South Highway 69 Suite 12, Humboldt, AZ 86329.	Town Hall, 2735 South Highway, 69 Suite 12, Humboldt, AZ 86329.	Mar. 24, 2022	040061
Yavapai (FEMA Docket No.: B–2205).	Town of Prescott Valley (21–09–0533P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	Mar. 24, 2022	040121
Yavapai (FEMA Docket No.: B–2205).	Town of Prescott Valley (21–09–1015P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	Apr. 6, 2022	040121
California:					
Contra Costa (FEMA Docket No.: B–2213).	City of Oakley (20–09–2109P).	The Honorable Sue Higgins, Mayor, City of Oakley, 3231 Main Street, Oakley, CA 94561.	Public Works and Engineering Department, 3231 Main Street, Oakley, CA 94561.	Feb. 7, 2022	060766
Fresno (FEMA Docket No.: B–2224).	City of Clovis (21–09–0911P).	The Honorable Jose Flores, Mayor, City of Clovis, 1033 5th Street, Clovis, CA 93612.	City Clerk's Office, Civic Center, 1033 5th Street, Clovis, CA 93612.	May 23, 2022	060044
Monterey (FEMA Docket No.: B–2224).	City of Seaside (21–09–1503P).	The Honorable Ian Oglesby, Mayor, City of Seaside, 440 Harcourt Avenue, Seaside, CA 93955.	Public Works Department, 610 Olympia Avenue, Seaside, CA 93955.	Jun. 6, 2022	060203
Placer (FEMA Docket No.: B–2213).	Unincorporated Areas of Placer County (21–09–1293P).	The Honorable Robert Weygandt, Chair, Board of Supervisors, Placer County, 175 Fulweiler Avenue, Auburn, CA 95603.	Placer County Public Works, 3091 County Center Drive, Suite 220, Auburn, CA 95603.	May 16, 2022	060239
Riverside (FEMA Docket No.: B–2224).	City of Banning (21–09–0855P).	The Honorable Kyle Pingree, Mayor, City of Banning, 99 East Ramsey Street, Banning, CA 92220.	Public Works Department, 99 East Ramsey Street, Banning, CA 92220.	May 31, 2022	060246
San Bernardino (FEMA Docket No.: B–2213).	City of Rancho Cucamonga (21–09–0942P).	The Honorable L. Dennis Michael, Mayor, City of Rancho Cucamonga, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	City Hall, Engineering Department, Plaza Level, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	Apr. 28, 2022	060671
San Diego (FEMA Docket No.: B–2224).	City of San Diego (21–09–1675P).	The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101.	Jun. 30, 2022	060295
Ventura (FEMA Docket No.: B–2213).	City of Simi Valley (21–09–1199P).	The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Apr. 15, 2022	060421
Florida: Duval (FEMA Docket No.: B–2213).	City of Jacksonville (21–04–0596P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	April 7, 2022	120077
Illinois:					
Cook (FEMA Docket No.: B–2205).	City of Country Club Hills (21–05–1457P).	The Honorable James W. Ford, Mayor, City of Country Club Hills, 4200 West 183rd Street, Country Club Hills, IL 60478.	City Hall, 4200 West 183rd Street, Country Club Hills, IL 60478.	Mar. 11, 2022	170078
Cook (FEMA Docket No.: B–2205).	City of Palos Heights (21-05-3445P).	The Honorable Robert Straz, Mayor, City of Palos Heights, 7607 West College Drive, Palos Heights, IL 60463.	City Hall, 7607 West College Drive, Palos Heights, IL 60463.	Mar. 11, 2022	170142
Cook (FEMA Docket No.: B–2183).	Unincorporated Areas of Cook County (21–05–1469P).	The Honorable Toni Preckwinkle, President, Cook County Board, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, 28th Floor, Chicago, IL 60602.	Feb. 4, 2022	170054

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Cook (FEMA Docket No.: B–2205).	Unincorporated Areas of Cook County (21-05-3445P).	The Honorable Toni Preckwinkle, President, Cook County Board, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, 28th Floor, Chicago, IL 60602.	Mar. 11, 2022	170054
Cook (FEMA Docket No.: B–2183).	Village of Franklin Park (21–05–1469P).	The Honorable Barrett F. Pedersen, Village President, Village of Franklin Park, 9500 Belmont Avenue, Franklin Park, IL 60131.	Village Hall, 9500 Belmont Avenue, Franklin Park, IL 60131.	Feb. 4, 2022	170094
Cook and DuPage (FEMA Docket No.: B–2183).	City of Chicago (21–05–1469P).	The Honorable Lori Lightfoot, Mayor, City of Chicago, 121 North LaSalle Street, Room 406, Chicago, IL 60602.	Department of Buildings, Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602.	Feb. 4, 2022	170074
DuPage (FEMA Docket No.: B–2183).	City of Naperville (19–05–1619P).	The Honorable Steve Chirico, Mayor, City of Naperville, Municipal Center, 400 South Eagle Street, Naperville, IL 60540.	Municipal Center, 400 South Eagle Street, Naperville, IL 60540.	Feb. 22, 2022	170213
Will (FEMA Docket No.: B–2183).	Village of Bolingbrook (22–05–0060P).	The Honorable Mary Alexander-Basta, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	Village Hall, 375 West Briarcliff Road, Bolingbrook, IL 60440.	Feb. 25, 2022	170812
Iowa:					
Iowa (FEMA Docket No.: B–2224).	City of Marengo (21–07–1041P).	The Honorable Adam Rabe, Mayor, City of Marengo, P.O. Box 245, Marengo, IA 52301.	City Hall, 153 East Main Street, Marengo, IA 52301.	Mar. 10, 2022	190157
Iowa: Iowa (FEMA Docket No.: B–2224).	Unincorporated Areas of Iowa County (21–07–1041P).	The Honorable John Gahring, Chair, Board of Supervisors, Iowa County, 970 Court Avenue, Marengo, IA 52301.	Iowa County, Auditor's Office, 970 Court Avenue, Marengo, IA 52301.	Mar. 10, 2022	190878
Kansas: Johnson (FEMA Docket No.: B–2205).	City of Lenexa (21–07–0238P).	The Honorable Michael Boehm, Mayor, City of Lenexa, 17101 West 87th Street Parkway, Lenexa, KS 66219.	City Hall, 12350 West 87th Street Parkway, Lenexa, KS 66215.	Apr. 13, 2022	200168
Louisiana: Calcasieu Parish (FEMA Docket No.: B–2224).	Unincorporated Areas of Calcasieu Parish (21–06–1326P).	Bryan C. Beam, Parish Administrator, Calcasieu Parish, 1015 Pithon Street, 2nd Floor, Lake Charles, LA 70602.	Calcasieu Parish Planning and Development Department, 901 Lake Shore Drive, Lake Charles, LA 70601.	May 23, 2022	220037
Michigan:					
Washtenaw (FEMA Docket No.: B–2224).	Township of Dexter (22–05–0189P).	Diane Ratkovich, Supervisor, Township of Dexter, 6880 Dexter-Pinckney Road, Dexter, MI 48130.	Township Hall, 6880 Dexter-Pinckney Road, Dexter, MI 48130.	May 6, 2022	260536
Washtenaw (FEMA Docket No.: B–2224).	Township of Northfield (22–05–0189P).	Kenneth Dignan III, Supervisor, Township of Northfield, 8350 Main Street, Whitmore Lake, MI 48189.	Township Hall, 75 Barker Road, Whitmore Lake, MI 48189.	May 6, 2022	260635
Michigan: Wayne (FEMA Docket No.: B–2213).	Charter Township of Plymouth (21–05–1510P).	Kurt Heise, Township Supervisor, Charter Township of Plymouth, 9955 North Haggerty Road, Plymouth, MI 48170.	Township Hall, 9955 North Haggerty Road, Plymouth, MI 48170.	May 6, 2022	260237
Wayne (FEMA Docket No.: B–2213).	Township of Canton (21–05–2918P).	Anne Marie Graham-Hudak, Supervisor, Canton Township, 1150 South Canton Center Road, Canton, MI 48188.	Canton Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	May 6, 2022	260219
Minnesota: Marshall (FEMA Docket No.: B–2213).	City of Argyle (21–05–4569P).	The Honorable Robert Clausen, Mayor, City of Argyle, P.O. Box 288, Argyle, MN 56713.	City Hall, 701 Pacific Avenue, Argyle, MN 56713.	April 22, 2022	270268
Nebraska: Dawson (FEMA Docket No.: B–2213).	City of Gothenburg (21–07–0869P).	The Honorable Joyce Hudson, Mayor, City of Gothenburg, 409 9th Street, Gothenburg, NE 69138.	Town Hall, 409 9th Street, Gothenburg, NE 69138.	Apr. 29, 2022	310062
New York:					
Erie (FEMA Docket No.: B–2205).	Town of Lancaster (20–02–1556P).	Ronald Ruffino, Sr., Supervisor, Town of Lancaster, 21 Central Avenue, Lancaster, NY 14086.	Town Hall, 21 Central Avenue, Lancaster, NY 14086.	May 17, 2022	360249
Onondaga (FEMA Docket No.: B–2205).	Town of Lysander (21–02–0578P).	Robert A. Wicks, Supervisor, Town of Lysander, 8220 Loop Road, Baldwinsville, NY 13027.	Town Hall, 8220 Loop Road, Baldwinsville, NY 13027.	May 3, 2022	360583
Rockland (FEMA Docket No.: B–2213).	Town of Ramapo (20–02–1315P).	The Honorable Michael B. Specht, Town Supervisor, Town of Ramapo, 237 Route 59, Suffern, NY 10901.	Ramapo Office of the Building Inspector, 237 Route 59, Suffern, NY 10901.	Jun. 1, 2022	365340
Westchester (FEMA Docket No.: B–2205).	Village of Mamaroneck (21–02–0550P).	The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	Building Inspector, The Regatta Building, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	Apr. 20, 2022	360916
Texas:					
Aransas (FEMA Docket No.: B–2213).	Unincorporated Areas of Aransas County (21–06–1547P).	The Honorable C.H. "Burt" Mills, Jr., County Judge, Commissioners Court, Aransas County Courthouse, 2840 Highway 35N, Rockport, TX 78382.	Aransas County Road and Bridge Office, 1931 FM 2165, Rockport, TX 78382.	May 16, 2022	485452
Tarrant (FEMA Docket No.: B–2205).	City of Arlington (21–06–0854P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	Mar. 28, 2022	485454
Tarrant (FEMA Docket No.: B–2205).	City of Fort Worth (21–06–0854P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76012.	Mar. 28, 2022	480596
Washington: King (FEMA Docket No.: B–2213).	City of Issaquah (21–10–0355P).	The Honorable Mary Lou Pauly, Mayor, City of Issaquah, 130 East Sunset Way, Issaquah, WA 98027.	City Hall, 1775 12th Avenue Northwest, Issaquah, WA 98027.	Apr. 26, 2022	530079

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Wisconsin:					
Dane (FEMA Docket No.: B–2205).	City of Madison (21–05–2552P).	The Honorable Satya Rhodes-Conway, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	Apr. 12, 2022	550083
Waukesha (FEMA Docket No.: B–2213).	Village of Menomonee Falls (21–05–3044P).	Dave Glasgow, Village President, Village of Menomonee Falls, W156 N8480 Pilgrim Road, Menomonee Falls, WI 53051.	Village Hall, W156 N8480 Pilgrim Road, Menomonee Falls, WI 53051.	Apr. 29, 2022	550483

[FR Doc. 2022–12381 Filed 6–8–22; 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–2240]

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 September 7, 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–2240, 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
Steele County, North Dakota and Incorporated Areas Project: 21–08–0005S Preliminary Date: September 14, 2021	
City of Finley	City Hall, 208 4th Street West, Finley, ND 58230.
City of Hope	City Hall, 107 Steele Avenue, Hope, ND 58046.
City of Sharon	Steele County Courthouse, 201 Washington Avenue West, Finley, ND 58230.
Unincorporated Areas of Steele County	Steele County Courthouse, 201 Washington Avenue West, Finley, ND 58230.

[FR Doc. 2022–12384 Filed 6–8–22; 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–2241]

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 September 7, 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–2241, 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
Crawford County, Ohio and Incorporated Areas Project: 14–05–4454S Preliminary Date: March 15, 2022	
City of Galion	City Hall, 301 Harding Way East, Galion, OH 44833.
Unincorporated Areas of Crawford County	County Administration Building, 112 East Mansfield Street, Bucyrus, OH 44820.
Waukesha County, Wisconsin and Incorporated Areas Project: 13–05–3721S Preliminary Dates: January 29, 2020, April 19, 2021, and September 15, 2021	
City of Brookfield	City Hall, 2000 North Calhoun Road, Brookfield, WI 53005.
City of Muskego	City Hall, W182S8200 Racine Avenue, Muskego, WI 53150.
City of New Berlin	City Hall, 3805 South Casper Drive, New Berlin, WI 53151.
City of Pewaukee	City Hall, W240N3065 Pewaukee Road, Pewaukee, WI 53072.
City of Waukesha	City Hall, 201 Delafield Street, Waukesha, WI 53188.
Unincorporated Areas of Waukesha County	Waukesha County Administration Building, 515 West Moreland Boulevard, Waukesha, WI 53188.
Village of Big Bend	Village Hall, W230S9185 Nevins Street, Big Bend, WI 53103.
Village of Dousman	Village Hall, 118 South Main Street, Dousman, WI 53118.
Village of Elm Grove	Village Hall, 13600 Juneau Boulevard, Elm Grove, WI 53122.
Village of Hartland	Village Hall, 210 Cottonwood Avenue, Hartland, WI 53029.
Village of Lannon	Village Hall, 20399 West Main Street, Lannon, WI 53046.
Village of Menomonee Falls	Village Hall, W156N8480 Pilgrim Road, Menomonee Falls, WI 53051.
Village of Mukwonago	Village Hall, 440 River Crest Court, Mukwonago, WI 53149.
Village of Pewaukee	Village Hall, 235 Hickory Street, Pewaukee, WI 53072.
Village of Sussex	Village Hall, N64W23760 Main Street, Sussex, WI 53089.
Village of Vernon	Village Hall, W249S8910 Center Drive, Vernon, WI 53103.
Village of Wales	Village Hall, 129 West Main Street, Wales, WI 53183.
Village of Waukesha	Village Hall, W250S3567 Center Road, Waukesha, WI 53189.

[FR Doc. 2022–12383 Filed 6–8–22; 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–2244]

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 Aurora (21–08–1079P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	080002
Arapahoe	City of Centennial (21–08–1000P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	080315
Larimer	Unincorporated areas of Larimer County (21–08–0460P).	The Honorable John Kefalas, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, Suite 2200, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2022	080101
Florida:						
Broward	City of Lauderdale Lakes (21–04–5598P).	The Honorable Hazelle P. Rogers, Mayor, City of Lauderdale Lakes, 4300 Northwest 36th Street, Lauderdale Lakes, FL 33319.	Development Services Planning and Zoning Section, 3521 Northwest 43rd Avenue, Lauderdale Lakes, FL 33319.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2022	120043
Monroe	Village of Islamorada (22–04–1253P).	The Honorable Pete Bacheler, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2022	120424
Monroe	Village of Islamorada (22–04–2190P).	The Honorable Pete Bacheler, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 29, 2022	120424
Osceola	Unincorporated areas of Osceola County (21–04–4047P).	Mr. Don Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Building Department, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 2, 2022	120189
Georgia: Gwinnett	Unincorporated areas of Gwinnett County (21–04–5535P).	The Honorable Nicole Love Hendrickson, Chair, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30046.	Gwinnett County Department of Water Resources, 684 Winder Highway, Lawrenceville, GA 30045.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 18, 2022	130322
Maryland:						
Anne Arundel	Unincorporated areas of Anne Arundel County, (22–03–0012P).	The Honorable Steuart Pittman, Anne Arundel County Executive, 44 Calvert Street, Annapolis, MD 21401.	Anne Arundel County Heritage Office Complex, 2664 Riva Road, Annapolis, MD 21401.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	240008
Prince George's.	City of Laurel (22–03–0012P).	The Honorable Craig A. Moe, Mayor, City of Laurel, 8103 Sandy Spring Road, Laurel, MD 20707.	City Hall, 8103 Sandy Spring Road, Laurel, MD 20707.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	240053

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.
Pennsylvania:						
Chester	Township of West Pikeland (21–03–1172P).	The Honorable Carin Mifsud, Chair, Township of West Pikeland Board of Supervisors, 1645 Art School Road, Chester Springs, PA 019425.	Township Hall, 1645 Art School Road, Chester Springs, PA 19425.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 25, 2022	421151
Montgomery	Township of Lower Frederick (22–03–0084P).	The Honorable Marla Hexter, Chair, Township of Lower Frederick Board of Supervisors, 53 Spring Mount Road, Schwenksville, PA 19473.	Township Hall, 53 Spring Mount Road, Schwenksville, PA 19473.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	420952
Texas:						
Bexar	Unincorporated areas of Bexar County (22–06–0280P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 29, 2022	480035
Dallas	City of Dallas (21–06–2894P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Oak Cliff Municipal Center, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 22, 2022	480171
Denton	City of Fort Worth (22–06–0542P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 15, 2022	480596
Johnson	City of Burleson (21–06–2082P).	The Honorable Chris Fletcher, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	485459
Tarrant	City of Fort Worth (22–06–0310P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 15, 2022	480596
Tarrant	City of Haslet (21–06–2045P).	The Honorable Gary Hulsey, Mayor, City of Haslet, 101 Main Street, Haslet, TX 76052.	City Hall, 101 Main Street, Haslet, TX 76052.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 6, 2022	480600
Tarrant	Unincorporated areas of Tarrant County (21–06–2045P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Fort Worth, TX 76196.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 6, 2022	480582
Williamson	City of Georgetown (21–06–2319P).	Mr. David Morgan, City of Georgetown Manager, P.O. Box 409, Georgetown, TX 78626.	Mapping and GIS Department, 300–1 Industrial Avenue, Georgetown, TX 78626.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	480668
Williamson	City of Round Rock (22–06–0132P).	The Honorable Craig Morgan, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	City Hall, 221 East Main Street, Round Rock, TX 78664.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	481048
Williamson	Unincorporated areas of Williamson County (21–06–2319P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	481079
Williamson	Unincorporated areas of Williamson County (21–06–3275P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 1, 2022	481079
Williamson	Unincorporated areas of Williamson County (22–06–0132P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 8, 2022	481079

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.
West Virginia: Wood.	Unincorporated areas of Wood County, (22-03-0440P).	The Honorable David Blair Couch, President, Wood County Commission, 1 Court Square, Suite 205, Parkersburg, WV 26101.	Wood County Commission Office, 1 Court Square, Suite 205, Parkersburg, WV 26101.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	540213

[FR Doc. 2022–12382 Filed 6–8–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0014]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Declaration of Financial Support

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0014 in the body of the letter, the agency name and Docket ID USCIS–2006–0072. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0072.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0072 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The U.S. Department of Homeland Security (DHS) and consular officers of the Department of State (DOS) use Form I–134 to determine whether, at the time of the beneficiary's application, petition, or request for certain immigration benefits, that beneficiary has sufficient financial support to pay for expenses for the duration of their temporary stay in the United States.

In the context of the Uniting for Ukraine parole process, biographic information about the beneficiary provided on the Form I–134 may be used for security screening and advance travel authorization by U.S. Customs and Border Protection (CBP). Prior to the transmission of this biographic information to CBP for this purpose, the beneficiary must confirm electronically the accuracy of the biographic information provided on their behalf by the Form I–134 respondent/supporter.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–134 (paper) is 2,500 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I–134 (e-file) is 50,000 and the estimated hour burden per response is 1.83 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 96,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $223,125.

Dated: June 3, 2022.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–12410 Filed 6–8–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0033]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Report of Medical Examination and Vaccination Record

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0033 in the body of the letter, the agency name and Docket ID USCIS–2006–0074. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0074.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0074 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–693; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–693 is 667,000 and the estimated hour burden per response is 3.08 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,054,360 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $329,331,250.

Dated: June 3, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–12411 Filed 6–8–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[22XDO120AF/DT64101100/DSB4A0000. T7AC00.241A; OMB Control Number 1035–0003]

Agency Information Collection Activities; Tribal Enrollment Count

AGENCY: Bureau of Trust Funds Administration, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Trust Funds Administration (BTFA, formerly known

as the Office of the Special Trustee for American Indians), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 8, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Nina Alexander, Director, Federal Information Resources, Bureau of Trust Funds Administration, U.S. Department of the Interior, 4400 Masthead Street NE, Albuquerque, New Mexico 87109; or by email to *Nina_Alexander@btfa.gov.* Please reference Office of Management and Budget (OMB) Control Number 1035–0003 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nina Alexander, Director, Federal Information Resources, Bureau of Trust Funds Administration at 4400 Masthead Street NE, Albuquerque, NM 87109; or by email at *Nina_Alexander@btfa.gov* or via telephone at 505–273–1620. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. 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.

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: Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994 (the Act), allows Indian Tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, ''How does a Tribe apply to withdraw funds?'' describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, Tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the BTFA to collect the Tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If BTFA did not collect this information, the BTFA would not be able to comply with the Act, and Tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

Title of Collection: Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal governments.

Total Estimated Number of Annual Respondents: One respondent, on average, every three years.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 750 hours.

Total Estimated Number of Annual Burden Hours: 750 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once per Tribe per trust fund withdrawal application.

Total Estimated Annual Non-Hour Burden CBTFA: 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.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–12075 Filed 6–8–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9120000.L07772200.XX0000 .22X.241A MO:4500162448]

Call for Nominations for the Sierra Front-Northern Great Basin and Mojave-Southern Great Basin Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management's (BLM) Sierra Front-Northern Great Basin and Mojave-Southern Great Basin Resource Advisory Councils (RAC) to fill existing vacancies, as well as member terms that are scheduled to expire. The Councils provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than July 11, 2022.

ADDRESSES: Nominations and completed applications should be sent to the BLM Nevada District Offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Rita Henderson, Public Affairs Specialist, BLM Nevada State Office, 1340 Financial Blvd., Reno, NV 89502; phone: (775) 461–6753; email: *ritahenderson@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold state, county, or local elected office; are employed by a state agency responsible for the management of natural resources, land, or water; represent Indian tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Nevada. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: *https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf.*

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM Nevada will issue a press release providing additional information for submitting nominations.

Nominations and completed applications should be sent to the office listed below:

Sierra Front-Northern Great Basin RAC

Lisa Ross, Public Affairs Specialist, BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701; phone: (775) 885–6107; email: *lross@blm.gov.*

Mojave-Southern Great Basin RAC

Kirsten Cannon, Public Affairs Specialist, BLM Southern Nevada District Office, 4701 North Torrey Pines, Las Vegas, NV 89130; phone: (702) 515–5057; email: *k1cannon@blm.gov.*

(Authority: 43 CFR 1784.4–1)

Christopher Bush,

BLM Nevada Chief of Communications.

[FR Doc. 2022–12420 Filed 6–8–22; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034032; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Museum of Us (formerly known as the San Diego Museum of Man) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 8, 2018. This notice corrects the cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Us. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Us at the address in this notice by July 14, 2022.

FOR FURTHER INFORMATION CONTACT: Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101 telephone (619) 239–2001 Ext. 38, email *cmosley@museumofus.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Museum of Us, San Diego, CA. The human remains and associated funerary objects were removed from San Diego, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (83 FR 39124–39126, August 8, 2018). Within 30 days of publication of the notice, the Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Indians of the Pechanga Reservation, California) submitted a request for repatriation of the human remains of the four individuals and the 233 associated funerary objects listed in the notice, which had been removed from six San

Diego County archeological sites within the vicinity of Agua Hedionda (CA–SDI–8797, CA–SDI–10671, CA–SDI–6132, CA–10673 (W–116, W–118, W–119, and W–129); CA–SDI–6134 (W–121); and SDM–W–124. Based on oral traditional, geographical, biological, and anthropological information, the Museum of Us has determined that the Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Indians of the Pechanga Reservation, California) are culturally affiliated with these human remains and associated funerary objects. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 39125, August 8, 2018), column 1, paragraph 6 ''Consultation'' is corrected by substituting the following paragraph:

A detailed assessment of the human remains was made by the Museum of Us professional staff in consultation with the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Captain Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (*previously* listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Jolla Band of Luiseno Indians, California (*previously* listed as La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation); La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Pala Band of Mission Indians (*previously* listed as Pala Band of Luiseno Mission Indians of the Pala Reservation, California); Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Indians of the Pechanga Reservation, California); San Pasqual Band of Diegueno Mission Indians of California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; Soboba Band of Luiseno Indians, California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as the ''The Tribes'').

In the **Federal Register** (83 FR 39126, August 8, 2018), column 1, paragraph 3, sentence 2 is corrected by substituting the following sentences:

During consultation, it was determined that these sites are located within Payómkawichum (''Luiseño'') Nation and Kumeyaay Nation shared territory and comprise one cemetery. Based on traditional funerary practices, all the objects from these sites are associated funerary objects.

In the **Federal Register** (83 FR 39126, August 8, 2018), column 2, paragraph 1, sentence 2 is corrected by substituting the following sentences:

During consultation, it was determined that this site is located within Payómkawichum (''Luiseño'') Nation and Kumeyaay Nation shared territory and is one cemetery. Based on traditional funerary practices, all the objects from this site are associated funerary objects.

In the **Federal Register** (83 FR 39126, August 8, 2018), column 2, paragraph 2, sentence 2 is corrected by substituting the following sentences:

During consultation, it was determined that this site is located within Payómkawichum (''Luiseño'') Nation and Kumeyaay Nation shared territory and is one cemetery. Based on traditional funerary practices, all the objects from this site are associated funerary objects.

In the **Federal Register** (83 FR 39126, August 8, 2018), column 2, paragraph 3, sentence 2 is corrected by substituting the following sentences:

These sites are all located within well-known and documented territories occupied by the Payomkawichum (Luiseno) and/or Kumeyaay Nations.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Carmen Mosley, NAGPRA Repatriation Manager, Museum of Us, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001 Ext. 38, email *cmosley@museumofus.org,* by July 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Museum of Us is responsible for notifying The Tribes that this notice has been published.

Dated: June 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–12426 Filed 6–8–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034031; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Indian Arts & Culture, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Indian Arts & Culture, Museum of New Mexico, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Indian Arts & Culture. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Indian Arts & Culture at the address in this notice by July 11, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Clifton, Curator of Archaeological Research Collections, Museum of Indian Arts & Culture, 710 Camino Lejo, Santa Fe, NM 87504, telephone (505) 476–4444, email *julia.clifton@state.nm.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Indian Arts & Culture, Museum of New Mexico, Santa Fe, NM. The human remains and associated funerary objects were removed from the Palace of the Governors, Santa Fe, NM.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Indian Arts & Culture professional staff in consultation with representatives of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (*previously* listed as Pueblo of San Juan); Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Tesuque, New Mexico; and the Santo Domingo Pueblo (*previously* listed as Kewa Pueblo, New Mexico, and as Pueblo of Santo Domingo) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

As described below, in 1962, 1965, and 1974–1975, human remains representing, at minimum, 26 individuals were removed from the Palace of the Governors in Santa Fe County, NM. The Palace building is owned by the Museum of New Mexico (MNM) and is part of the New Mexico History Museum. The fragmentary human remains belong to 16 adults, two adolescents, two children, and six infants. With two exceptions, the human remains of all 26 individuals were recovered from sediments below the 20th century floor of the Palace structure.

In 1962, during the renovation of Room 4 of the Palace of the Governors, sub-floor excavations were conducted by Museum staff members Bruce Ellis and Stanly Stubbs. In deposits dating to the Pueblo Revolt era (A.D. 1680–1693), the fragmentary remains of an infant 7–10 months old were recovered.

In 1965, while the floor of the Southeast room of the Palace was being replaced, excavations were conducted by volunteers under the direction of MNM staff member Robert Alexander. The fragmentary remains belonging to one female adult, one adolescent who was probably male and approximately 15–18 years old, and one adult of undetermined sex were recovered.

In late 1974 and early 1975, prior to planned renovations to the Palace interior, extensive excavations under the floors of Rooms 5, 7, 8, and the West Hall were undertaken by Museum personnel and volunteers under the direction of Cordelia Snow. The extremely fragmentary remains belonging to three adult females, five infants under the age of one year, two children between the age of one and three years, two adolescents 11–14 years old, and eight adults of undetermined sex were recovered.

In 1974, a foot bone belonging to an adult of undetermined sex and a tooth belonging to an adult of undetermined sex were recovered from the Patio area of the Palace. No stratigraphic context was recorded for these two individuals.

Immediately following excavation, all the human remains listed in this notice were transferred to the Laboratory of Anthropology (now the Museum of Indian Arts & Culture/Laboratory of Anthropology), a sister agency of the New Mexico History Museum within the Museum of New Mexico. No known individuals were identified. The four associated funerary objects are one lot of fabric remnants, one sherd, one Olivella shell bead, and one metal straight pin.

Established in 1610 by Spanish colonists from Mexico as the seat of their colonial administration, the Palace of the Governors in Santa Fe, New Mexico is one of the oldest continually occupied buildings in the continental United States. Extensively modified over the centuries, today it occupies a place on the Plaza in downtown Santa Fe. According to oral historical information from the Pueblo of Tesuque, before the Spanish arrived in the area, the area of downtown Santa Fe had been occupied for centuries by the Pueblo's Tewa ancestors as the village of Oga-Pogee (the place of the white shell). During the Pueblo Revolt of 1680, the Palace served as a fortress for besieged Spanish colonists. Historical records indicate that from late 1680, when the colonists retreated to the El Paso area, until the return of the Spanish in December 1693, the Palace was rebuilt as a Pueblo village and inhabited by Northern and Southern Tewa people. This Native occupation is supported by archeological and geographic information, and its occupation by the ancestors of several contemporary Tribes is consistent with historical documents relating to the fate of the original Palace of the Governors following the Pueblo Revolt.

Over the four years following the return of the Spanish, New Mexico was wracked by widespread violence, as Diego de Vargas and his army attempted to subdue the Pueblos. The refugees from the Pueblo that had been established in the Palace of the Governors fled to other villages, but many of those villages, in turn, were subsequently abandoned or destroyed by Vargas, creating additional waves of refugees. The events of this period are complex and painful, and probably because they are so traumatic, are not easily accessible through oral history. Most of the Tewa villages (the Pueblos of Tesuque, Pojoaque, San Ildefonso, Santa Clara, Nambe, and Ohkay Owingeh) occupied by the Northern Tewa managed to survive this tumultuous period and are still occupied today by their descendants. The Southern Tewa villages located southeast of Santa Fe were abandoned during this period of violence and political unrest. By 1706, the Southern Tewa had left their villages and moved north, to Santa Fe and beyond, and into the region occupied by the Northern Tewa, as well as west, to the Pueblo of Santo Domingo and the Hopi villages.

Except for the fragmentary human remains of the individuals recovered from the Palace Patio, the human remains of all the other individuals, which were recovered from sub-floor deposits, date to the Native American occupation of the building following the Pueblo Revolt in August 1680. While the stratigraphic contexts for the human remains of the two individuals recovered from the Palace Patio in 1974 were not recorded, no Spanish Colonial or historic Euro-American burials are documented in the Palace Courtyard/Patio area north of the current Palace structure, within what could have been the limits of the post-Revolt era Pueblo. Consequently, the single metatarsal element and the tooth found in this area are presumed to be Native American and related either to the pre-Spanish occupation or to the Revolt era occupation by Puebloan people.

Determinations Made by the Museum of Indian Arts & Culture, Museum of New Mexico

Officials of the Museum of Indian Arts & Culture, Museum of New Mexico have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 26 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Julia Clifton, Curator of Archaeological Research Collections, Museum of Indian Arts & Culture, 710 Camino Lejo, Santa Fe, NM 87504, telephone (505) 476–4444, email *julia.clifton@state.nm.us,* by July 11, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Museum of Indian Arts & Culture, Museum of New Mexico is responsible for notifying The Tribes that this notice has been published.

Dated: June 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–12428 Filed 6–8–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–671–672 and 731–TA–1571–1573 (Final)]

Oil Country Tubular Goods From Argentina, Mexico, Russia, and South Korea; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–671–672 and 731–TA–1571–1573 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of oil country tubular goods (OCTG) from Argentina, Mexico, Russia, and South Korea,[1] provided for in subheadings 7304.29, 7305.20, and 7306.29 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and/or sold at less-than-fair-value.

DATES: May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Tyler Berard ((202) 205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock. Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG. Excluded from the scope of the investigation are: casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Russia of OCTG, and that imports of such products from Argentina, Mexico, and Russia are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on October 6, 2021, by Borusan Mannesmann Pipe U.S., Inc., Baytown, Texas; PTC Liberty Tubulars LLC, Liberty, Texas; U.S. Steel Tubular Products, Inc., Pittsburgh, Pennsylvania; Welded Tube USA, Inc., Lackawanna, New York; and the United States Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Pittsburgh, Pennsylvania.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the

[1] While Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of OCTG from South Korea, the Commission is continuing its investigative activities pursuant to Commission rule 207.21(c).

Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 7, 2022, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 22, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 15, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 21, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 14, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 29, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 29, 2022. On October 19, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 21, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 6, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–12448 Filed 6–8–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1223]

Certain Shingled Solar Modules, Components Thereof, and Methods for Manufacturing the Same; Notice of a Final Determination Granting a Joint Motion To Terminate the Investigation Based on Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint motion to terminate the above-captioned investigation in its entirety based on settlement. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 21, 2020, the Commission instituted this investigation based on a complaint filed by The Solaria Corporation (''Solaria'') of Fremont, California. 85 FR 67010–11 (Oct. 21, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain shingled solar modules, components thereof, and methods for manufacturing the same by reason of infringement of certain claims of U.S. Patent Nos. 10,522,707 (''the '707 patent''), 10,763,388 (''the '388 patent''), and 10,651,333 (''the '333 patent''). *Id.* at 67011. The complaint further alleges that a domestic industry (''DI'') exists. *Id.* The notice of investigation named Canadian Solar Inc. of Guelph, Ontario, Canada and Canadian Solar (USA) Inc.

of Walnut Creek, California (collectively, ''Canadian Solar'') as the respondents. *Id.* The Office of Unfair Import Investigations is not named as a party. *Id.*

On July 15, 2021, the Commission terminated the investigation as to the '707 patent based on Solaria's withdrawal of the allegations in the complaint as to that patent. Order No. 9 (June 28, 2021), *unreviewed by* Comm'n Notice (July 15, 2021). On October 13, 2021, the Commission terminated the investigation as to certain claims of the '333 patent and the '388 patent based on Solaria's withdrawal of the allegations in the complaint as to those claims. Order No. 13 (Sept. 14, 2021), *unreviewed by* Comm'n Notice (Oct. 13, 2021).

On October 22, 2021, the presiding chief administrative law judge (''CALJ'') issued a final initial determination (''FID'') on violation, finding a violation of section 337 with respect to the '388 and '333 patents. The FID also included the CALJ's recommended determination on remedy and bonding.

On November 5, 2021, Canadian Solar filed a petition for review of certain aspects of the FID on violation. On November 15, 2021, Solaria filed a response to Canadian Solar's petition.

On November 22, 2021, Canadian Solar filed a notice of supplemental authority to inform the Commission that a claim construction order issued in a related district court litigation involving the same parties and patents at issue in this investigation.

On November 23, 2021, Canadian Solar filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission did not receive a public interest submission from Solaria. The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's **Federal Register** notice. 86 FR 62845–46 (Nov. 12, 2021).

On February 4, 2022, the Commission determined to review the FID in part and to remand the FID in part to the CALJ to address, in the first instance, Canadian Solar's on-sale bar defenses as to the asserted claims of the '333 patent. 87 FR 7867–70 (Feb. 10, 2022).

On February 18, 2022, Solaria and Canadian Solar each filed initial briefs on the issues under review, as well as the issues of remedy, the public interest, and bonding. On March 4, 2022, Solaria and Canadian Solar each filed reply briefs.

On March 4, 2022, the CALJ issued a remand initial determination (''RID'') finding that Canadian Solar failed to show, by clear and convincing evidence, that the asserted claims of the '333 patent are anticipated under the on-sale bar of 35 U.S.C. 102.

On March 16, 2022, Canadian Solar filed a petition for review of the RID. On March 23, 2022, Solaria filed a response to Canadian Solar's petition. On April 20, 2022, the Commission determined to extend the deadline for determining whether to review the RID until June 6, 2022.

On June 3, 2022, the parties filed a joint motion to terminate the investigation based on settlement.

The Commission has determined to grant the joint motion to terminate the investigation. The Commission finds that, consistent with Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), the Moving Parties attached a copy of the signed settlement and license agreement between the parties (the ''Settlement Agreement'') as Exhibit A, with a redacted version of the Settlement Agreement attached as Exhibit B. The Moving Parties submit that the Settlement Agreement resolves all of the issues in dispute in this Investigation. Mot. at 1–2. In further compliance with Commission Rule 210.21(b)(1), the Motion contains a statement that ''there are no other agreements, written or oral, express or implied, between the Private Parties concerning the subject matter of this Investigation.'' Mot. at 2. The Commission finds that termination of this investigation by settlement will not adversely affect the public interest. *See* 19 CFR 210.50(b)(2).

This investigation is hereby terminated.

The Commission vote for this determination took place on June 6, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 6, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–12451 Filed 6–8–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On June 3, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Delaware in the lawsuit entitled *United States and the State of Delaware* v. *Hercules LLC, et al.,* Civil Action No. 1:22–cv–00731–UNA.

The United States and the State of Delaware filed this lawsuit under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The complaint names 22 companies as defendants in connection with the alleged releases of hazardous substances at the Delaware Sand and Gravel Superfund Site (the ''Site) in New Castle, Delaware. Under the consent decree, a group of defendants will perform the remedial action that EPA selected for the Site at an estimated cost of $46.1 million. The defendants will also pay all EPA future response costs after the first $800,000, which is the amount of a credit allowed defendants consistent with EPA's Orphan Share Policy, which reflects the fact that some otherwise liable parties at the Site are now defunct. In return, the United States and Delaware agree not to sue the defendants under sections 106 and 107 of CERCLA or under section 7003 of the Resource Conservation and Recovery Act.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Delaware* v. *Hercules LLC, et al.,* D.J. Ref. No. 90–11–2–298/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree without the exhibits upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–12404 Filed 6–8–22; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0012; NARA–2022–053]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by June 8, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0012/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov*, you may contact *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Air Force, Agency-wide, Financial Management (65 Series)-Financial Management-Auditing Records (DAA–AFU–2021–0005).

2. Department of Commerce, National Oceanic and Atmospheric Administration, Coastal Nonpoint Pollution Control Programs Records (DAA–0370–2022–0002).

3. Department of Homeland Security, U.S. Citizenship and Immigration Services, I–194 Application for Entrepreneur Parole Records (DAA–0566–2022–0008).

4. Department of Transportation, Federal Aviation Administration, Pilot Record Database (DAA–0237–2021–0023).

5. Central Intelligence Agency, Agency-wide, Global Trade Patterns (DAA–0263–2021–0012).

6. Central Intelligence Agency, Agency-wide, Audit Logs (DAA–0263–2022–0003).

7. Federal Trade Commission, Office of the Secretary, Correspondence Records (DAA–0122–2022–0001).

8. National Aeronautics and Space Administration, Agency Wide, Protective Services (DAA–0255–2022–0003).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–12423 Filed 6–8–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–4479; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On April 26, 2022, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on May 31, 2022, to:

Permit No. 2023–001

1. Dr. Michelle Shero

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–12412 Filed 6–8–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 31, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 49 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–63, CP2022–69.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–12388 Filed 6–8–22; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on Advancing Privacy-Enhancing Technologies

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information on Advancing Privacy-Enhancing Technologies.

SUMMARY: The Office of Science and Technology Policy (OSTP)—on behalf of the Fast Track Action Committee on Advancing Privacy-Preserving Data Sharing and Analytics of the Subcommittee on Networking and Information Technology Research and Development (NITRD) of the National Science and Technology Council, the National Artificial Intelligence Initiative Office, and the NITRD National Coordination Office—requests public comments to help inform development of a national strategy on privacy-preserving data sharing and analytics, along with associated policy initiatives. The national strategy will put forth a vision for responsibly harnessing privacy-preserving data sharing and analytics to benefit individuals and society. It will also propose actions from research investments to training and education initiatives, to the development of standards, policy, and regulations needed to achieve that vision.

DATES: Interested persons and organizations are invited to submit comments on or before 5:00 p.m. ET on Friday, July 8.

ADDRESSES: Interested individuals and organizations should submit comments electronically to *PETS-RFI@nitrd.gov* and include < RFI Response: Privacy-Enhancing Technologies > in the subject line of the email. Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions: Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response, in English.

Responses may address one or as many topics as desired from the enumerated list provided in this RFI, noting the corresponding number of the topic(s) to which the response pertains. Submissions must not exceed 10 pages (exclusive of cover page) in 11-point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (*e.g.,* academic institution, advocacy group, professional society, community-based organization, industry, member of the public, government, other). Respondent's role in the organization may also be provided (*e.g.,* researcher, administrator, student, program manager, journalist) on a voluntary basis. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials; these materials, as well as a list of references, do not count toward the 10-page limit. No business proprietary information, copyrighted information, or personally identifiable information (aside from that requested above) should be submitted in response to this RFI. Comments submitted in response to this RFI may be posted online or otherwise released publicly.

In accordance with Federal Acquisitions Regulations Systems 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Jeri Hessman at *PETS-RFI@nitrd.gov* or 202–459–9683.

SUPPLEMENTARY INFORMATION: Privacy-Enhancing Technologies (PETs) present a key opportunity to harness the power of data and data analysis techniques in a secure, privacy-protecting manner.[1] This can enable more collaboration across entities, sectors, and borders to help tackle shared challenges, such as health care, climate change, financial crime, human trafficking, and pandemic response. PETs can also help promote continued innovation in emerging technologies in a manner that supports human rights and shared values of democratic nations, as highlighted during the Summit for Democracy in December 2021, which included an announcement that the United States and the United Kingdom are collaborating to develop bilateral innovation prize challenges focused on advancing PETs. However, to date, PETs have not achieved widespread adoption due to a variety of factors, among them, limited technical expertise, perceived risks, financial cost, and the need for more research and development.

The purpose of this Request for Information is to better understand how to accelerate the responsible development and adoption of PETs in a manner that maximizes the benefit to individuals and society, including increasing equity for underserved or marginalized groups and promoting trust in data processing and information technologies.

Terminology: Privacy-enhancing technologies (PETs) refer to a broad set of technologies that protect privacy, which are within the scope for this RFI. We are particularly interested in privacy-preserving data sharing and analytics technologies, which describes the set of techniques and approaches that enable data sharing and analysis among participating parties while maintaining disassociability and confidentiality.[2] Such technologies include, but are not limited to, secure multiparty computation, homomorphic encryption, zero-knowledge proofs, federated learning, secure enclaves, differential privacy, and synthetic data generation tools.

Background: Data are vital resources for solving society's biggest problems. Clinicians are using data to identify the best treatments for their patients, farmers are using data to predict and improve farm yields, and public servants are using data to create evidence-based policies. Artificial intelligence (AI) and other emerging analytics techniques are amplifying the power of data, making it easier to discover new patterns and insights, ranging from better models to predict the impacts of climate change to new methods for detecting financial crimes.

While data are enabling innovation and insights across sectors, it can still be challenging to harness the full potential of data due to the overarching imperative for adequate privacy and security protections. For instance, when trying to explore developing new treatment options, some medical researchers may experience challenges when trying to gain access to medical records because those records reveal health information that may identify the individual patients, implicating the privacy and safety of those patients as well as medical privacy law. In other situations, confidentiality concerns around intellectual property limit research collaborations that could improve data model training and speed advances within those sectors.

Certain types of PETs provide ways to share data or provide access to data to drive innovation while also protecting privacy. For example, PETs could allow for the analysis of medical images across hospitals and international borders without transferring that data or even without using or disclosing the images to researchers. PETs could enable access to more comprehensive and diverse datasets, which in turn could enable the development of AI systems that can produce better treatments for patients from all demographic backgrounds.

Acknowledging this potential, the Federal Government seeks to develop a national strategy for advancing and adopting privacy-preserving data sharing and analysis. In the public sector, PETs can facilitate more integrated public services by enabling data analysis across agencies, advancing the Federal Data Strategy's mission ''to fully leverage the value of federal data for mission, service, and the public good.''[3] In the private sector, PETs can spur innovation and efficiencies by making it feasible for companies to enable more data access for researchers and nonprofits, or even for each other, without disclosing sensitive information.

Data processing by the Federal Government and in the private sector is currently governed by a number of laws, regulations, and policies. Many of these policies are in place to protect the information privacy of individuals and businesses, often by sector (*e.g.,* healthcare, education), by entity (*e.g.,* interagency data sharing, open data), or by jurisdiction (*e.g.* the California Consumer Protection Act). However, as PETs continue to mature and mitigate the risks to information privacy when used to enable data sharing and analysis, it is possible that some existing policies will need modification. Such modifications could make it easier to harness the potential of PETs, while ensuring that the Federal Government and other entities continue to manage data in a responsible and privacy-protecting manner.

Through this RFI, we seek public input to identify potential actions or recommendations that could be put forth as part of a national strategy on privacy-preserving data sharing and analysis. We are especially interested in comments on Federal laws, regulations, authorities, research priorities, and other mechanisms across the Federal Government that could be used, modified, or introduced to accelerate the development and adoption of PETs.

Scope: OSTP invites input from any interested stakeholders. In particular, OSTP is interested in input from parties researching, developing, acquiring, using, or governing privacy-enhancing technologies; parties with expertise on the exchange of data with or within the Federal Government; and parties with experience using PETs to ensure effective delivery of Federal services and increase equitable outcomes.

Information Requested: Respondents may provide information for one or as many topics below as they choose. Through this RFI, OSTP seeks information on potential specific actions that would advance the adoption of PETs in a responsible manner, including on the following topics:

1. *Specific research opportunities to advance PETs:* Information about Federal research opportunities that could be introduced or modified to accelerate the development or adoption

[1] For the purposes of this RFI, privacy-enhancing, privacy-preserving, and privacy-protecting are used as equivalent terms.

[2] Disassociability means enabling the processing of data or events without association to individuals or devices beyond the operational requirements of the system. NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, v 1.0, *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.01162020.pdf.*

[3] *https://strategy.data.gov/overview/.*

of PETs. This includes topics for research, hardware and software development, and educational and training programs. This also includes information about specific techniques and approaches that could be among the most promising technologies in this space.

2. *Specific technical aspects or limitations of PETs:* Information about technical specifics of PETs that have implications for their development or adoption. This includes information about specific PET techniques that are promising, recent or anticipated advances in the theory and practice of PETs, constraints posed by limited data and computational resources, limitations posed by current approaches to de-identification and deanonymization techniques, limitations or tradeoffs posed when considering PETs as well as technical approaches to equity considerations such as fairness-aware machine learning, security considerations based on relevant advances in cryptography or computing architecture, and new or emerging privacy-enhancing techniques. This also includes technical specifications that could improve the benefits or privacy protections, or reduce the risks or costs of adopting PETs.

3. *Specific sectors, applications, or types of analysis that would particularly benefit from the adoption of PETs:* Information about sectors, applications, or types of analysis that have high potential for the adoption of PETs. This includes sectors and applications where data are exceptionally decentralized or sensitive, where PETs could unlock insights or services of significant value to the public, where PETs can reduce the risk of unintentional disclosures, where PETs might assist in data portability and interoperability, and sectors and applications where the adoption of PETs might exacerbate risks, including in the areas of privacy, cybersecurity, accuracy of data analysis, equity for underserved communities, and economic competition. This topic covers opportunities to improve the effectiveness of data sharing among specific Federal agencies and between specific Federal agencies and entities outside the Federal Government, including the goals outlined in Section 5 of Executive Order 14058: Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government.

4. *Specific regulations or authorities that could be used, modified, or introduced to advance PETs:* Information about Federal regulations or authorities that could be used, modified, or introduced to accelerate the development or adoption of PETs. This includes privacy-related rulemaking authorities under the Office of Management and Budget, the Federal Trade Commission, and financial regulatory bodies, as well as acquisition regulations under the Federal Acquisition Regulations. This also includes the Federal authority to set procedures for agencies to ensure the responsible sharing of data. This also covers hiring authorities to recruit Federal employees with expertise to advance PETs, as well as acquisition authorities (*e.g.,* Other Transaction Authority) to procure PETs for development.

5. *Specific laws that could be used, modified, or introduced to advance PETs:* Information about provisions in U.S. Federal law, including implementing regulations, that could be used, modified, or introduced to accelerate the development or adoption of PETs. This includes provisions, safe harbors, and definitions of use, disclosure, safeguards, and breaches. Information may also include comments on how to advance PETs as part of new or proposed legislation, such as that which would create a National Secure Data Service. Information may also include comments on State law or on international law as it applies to data sharing among international entities.

6. *Specific mechanisms, not covered above, that could be used, modified, or introduced to advance PETs:* This includes the development of open-source protocols and technical guidance, the use of public-private partnerships, prize challenges, grants, testbeds, standards, collaborations with foreign countries and nongovernmental entities, the Federal Data Strategy, and data sharing procedures with State, local, tribal, and territorial governments. This also includes interpretations and modifications of standard non-disclosure agreements, confidentiality clauses, data use or sharing agreements, etc.

7. *Risks related to PETs adoption:* Identification of risks or negative consequences resulting from PETs adoption as well as policy, governance, and technical measures that could mitigate those risks. This includes risks related to equity for underserved or marginalized groups, the complexity of implementation and resources required for adoption, as well as from conceptual misunderstandings of the technical guarantees provided by PETs. This also includes recommendations on how to measure risk of PETs adoption and conduct risk-benefit analyses of use.

8. *Existing best practices that are helpful for PETs adoption:* Information about U.S. policies that are currently helping facilitate adoption as well as best practices that facilitate responsible adoption. This includes existing policies that support adoption, including in the areas of privacy, cybersecurity, accuracy of data analysis, equity for underserved communities, and economic competition. This also includes information about where and when PETs can be situated within tiered access frameworks for accessing restricted data, ranging from publicly accessible to fully restricted data.

9. *Existing barriers, not covered above, to PETs adoption:* Information about technical, sociotechnical, usability, and socioeconomic barriers that have inhibited wider adoption of PETs, such as a lack of public trust. This includes recommendations on how such barriers could be overcome. Responses that focus on increasing equity for underserved or marginalized groups are especially welcome.

10. *Other information that is relevant to the adoption of PETs:* Information that is relevant to the adoption of PETs that does not fit into any of the topics enumerated above.

Dated: June 6, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–12432 Filed 6–8–22; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95036; File No. SR–MEMX–2022–14]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Market Data Fees

June 3, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

Background

The purpose of the proposed rule change is to amend the Fee Schedule to adopt fees the Exchange will charge to Members and non-Members for each of its three proprietary market data feeds, namely MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale (collectively, the ''Exchange Data Feeds''). As set forth below, the Exchange believes that the proposed fees are fair and reasonable and has based its proposal on the fact that competitive forces exist with respect to the Exchange Data Feeds, a comparison to competitor pricing, as well as a cost analysis intended to provide transparency to the Commission and to the industry at large. The Exchange is proposing to implement the proposed fees immediately.

Before setting forth the additional details regarding the existence of competitive forces, the comparison to competitor pricing and the Exchange's cost analysis for transparency purposes, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers three separate data feeds to subscribers—MEMOIR Depth, MEMOIR Top and MEMOIR Last Sale. The Exchange notes that there is no requirement that any Firm subscribe to a particular Exchange Data Feed or any Exchange Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Exchange Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Exchange Data Feeds and their use thereof, which are in turn based upon factors deemed relevant by each Firm. The proposed pricing for each of the Exchange Data Feeds is set forth below.

MEMOIR Depth

The MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.[4] The Exchange proposes to charge each of the fees set forth below for MEMOIR Depth.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Depth feed, the Exchange proposes to charge $1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Depth feed for purposes of internal distribution (*i.e.,* an ''Internal Distributor''). The Exchange proposes to define an Internal Distributor as ''a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor's own organization.'' [5] The proposed access fee for internal distribution will be charged only once per month per subscribing entity (''Firm''). The Exchange notes that it has proposed to use the phrase ''own organization'' in the definition of Internal Distributor and External Distributor because a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an Exchange Data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.

2. *External Distribution Fee.* For redistribution of the MEMOIR Depth feed, the Exchange proposes to establish an access fee of $2,500 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Depth feed, which would be defined to mean ''a Distributor that receives an Exchange Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.'' [6] The proposed access fee for external distribution will be charged only once per month per Firm. As noted above, while a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party, if a Firm distributes data received from an Exchange Data product to an unaffiliated third party that would be considered distribution to data recipients outside the Distributor's own organization and the access fee for external distribution would apply.

3. *Non-Display Use Fees.* The Exchange proposes to establish separate non-display fees for usage by Trading Platforms and other Users (*i.e.,* not by Trading Platforms).[7] Non-Display Usage would be defined to mean ''any method of accessing an Exchange Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or

[3] *See* Exchange Rule 1.5(p).

[4] *See* MEMX Rule 13.8(a).

[5] *See* Market Data Definitions under the proposed MEMX Fee Schedule. The Exchange also proposes to adopt a definition for ''Distributor'', which would mean any entity that receives an Exchange Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

[6] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[7] The Exchange proposes to define a Trading Platform as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* Market Data Definitions under the proposed MEMX Fee Schedule.

persons.'' [8] For Non-Display Usage of the MEMOIR Depth feed not by Trading Platforms, the Exchange proposes to establish a fee of $1,500 per month.[9] For Non-Display Usage of the MEMOIR Depth feed by Trading Platforms, the Exchange proposes to establish a fee of $4,000 per month. The proposed fees for Non-Display Usage will be charged only once per category per Firm.[10] In other words, with respect to Non-Display Usage Fees, a Firm that uses MEMOIR Depth for non-display purposes but does not operate a Trading Platform would pay $1,500 per month, a Firm that uses MEMOIR Depth in connection with the operation of one or more Trading Platforms (but not for other purposes) would pay $4,000 per month, and a Firm that uses MEMOIR Depth for non-display purposes other than operating a Trading Platform and for the operation of one or more Trading Platforms would pay $5,500 per month.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $30 per month and a Non-Professional User Fee (per User) of $3 per month. The proposed User fees would apply to each person that has access to the MEMOIR Depth feed for displayed usage. Thus, each Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. Internal Distributors and External Distributors of the MEMX Depth feed must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the MEMOIR Depth feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Depth feed.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* Other than the Digital Media Enterprise Fee described below, the Exchange is not proposing to adopt an Enterprise Fee for the MEMOIR Depth feed at this time.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Depth for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $5,000 per month for a Digital Media Enterprise license to the MEMOIR Depth feed.

MEMOIR Top

The MEMOIR Top feed is a MEMX-only market data feed that contains top of book quotations based on equity orders entered into the System as well as administrative messages.[11] The Exchange proposes to charge each of the fees set forth below for MEMOIR Top.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Top feed, the Exchange proposes to charge $750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Top feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Top feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Top feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Top.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Top feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Top feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Top feed must report all Professional and Non-Professional Users [12] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Top feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Top feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Professional and Non-Professional Users. The Exchange proposes to establish a fee of $10,000 per month for an Enterprise license to the MEMOIR Top feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month for a Digital Media Enterprise license to the MEMOIR Top feed.

MEMOIR Last Sale

The MEMOIR Last Sale feed is a MEMX-only market data feed that contains only execution information based on equity orders entered into the

[8] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[9] Non-Display Usage not by Trading Platforms would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

[10] The Exchange proposes to adopt note 1 to the proposed Market Data fees table, which would make clear to subscribers that use of the data for multiple non-display purposes or operate more than one Trading Platform would only be charged once per category per month. Thus, the footnote makes clear that each fee applicable to Non-Display Usage is charged per subscriber (*e.g.,* a Firm) and that each of the fees represents the maximum charge per month per subscriber regardless of the number of non-display uses and/or Trading Platforms operated by the subscriber, as applicable.

[11] *See* MEMX Rule 13.8(b).

[12] The Exchange notes that while it is not differentiating Professional and Non-Professional Users based on fees (in that it is proposing the same fee for such Users) for this data feed, and thus will not audit Firms based on this distinction, it will request reporting of each distinct category for informational purposes.

System as well as administrative messages.[13] The Exchange proposes to charge each of the fees set forth below for MEMOIR Last Sale.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Last Sale feed, the Exchange proposes to charge $500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Last Sale feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Last Sale feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Last Sale feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish separate non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Last Sale.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Last Sale feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Last Sale feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Last Sale feed must report all Professional and Non-Professional Users [14] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Last Sale feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Last Sale feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Professional and Non-Professional Users. The Exchange proposes to establish a fee of $10,000 per month per Firm for an Enterprise license to the MEMOIR Last Sale feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month per Firm for a Digital Media Enterprise license to the MEMOIR Last Sale feed.

Additional Discussion—Competitive Forces

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [16] Indeed, equity trading is currently dispersed across 16 exchanges,[17] 31 alternative trading systems,[18] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. While the competitive environment described above and the Commission's statements related thereto are primarily regarding market share and trading volumes, and not market data specifically, the Exchange believes that competition does constrain the Exchange's ability to set market data prices, as described below.

The recent growth of MEMX's market share demonstrates the competitive marketplace in which the Exchange operates. The Exchange launched in September 2020 and slowly grew over the next several months as it completed its staged rollout intended to ensure market stability. In January 2021, the Exchange averaged approximately 0.6% of consolidated trading volume.[19] The Exchange experienced significant growth every month from February 2021 to December 2021 and ended 2021 with market share of approximately 4.2% of consolidated volume; MEMX has maintained a similar market share percentage in 2022, with approximately 4.05% market share to date.[20]

As the Exchange's transaction market share has increased, so has the value of its market data. In addition to achieving over 4% of consolidated volume, the Exchange's NBBO Quote Market Share (*i.e.,* the notional value displayed at the inside national best bid or offer, or ''NBBO'', as a percentage of overall notional value at the NBBO) is comparable to that of Cboe BZX Exchange, Inc. (''BZX'') and the New York Stock Exchange (''NYSE''), and higher than that of Cboe EDGX Exchange. Inc.[21] The Exchange determined the level of the fees to charge for the Exchange Data Feeds based on the value of the Exchange's market data as well as the cost analysis described later in this filing. In particular, as noted elsewhere in this proposal, the proposed fee structure is comparable to that of BZX and the proposed fees themselves are equal to or in many cases lower than BZX. Thus, as the Exchange has similar market quality to BZX and other larger maker/taker exchanges and has priced its data at a significant discount to those markets,

[13] *See* MEMX Rule 13.8(c).

[14] *See supra* note 12.

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[16] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[17] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at: *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[18] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsData.* A list of alternative trading systems registered with the Commission is available at: *https://www.sec.gov/foia/docs/atslist.htm.*

[19] Market share percentage calculated as of February 1, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[20] *See id.*

[21] *See* Cboe Global Markets NBBO Quote Market Share Statistics, available at: *https://www.cboe.com/us/equities/market_statistics/.* In April 2022, NBBO Quote Market Share of the largest six equities exchanges was as follows: NYSE Arca 18.88%, Nasdaq 17.67%, BZX 11.66%, NYSE 10.43%, MEMX 9.85%, EDGX 8.91%. The remaining ten equities exchanges have NBBO Quote Market Share below 5%.

the Exchange believes it is starting from a place of general acceptability to industry participants. Indeed, while silence cannot necessarily be interpreted as support, the Exchange notes that no comment letters on the Initial Proposal have been filed.

As noted above, over a 16-month period, MEMX has grown from 0% to over 4% market share of consolidated trading volume. During that same period, the Exchange has had a steady increase in the number of subscribers to Exchange Data Feeds. As a new entrant into the exchange industry, the Exchange is particularly subject to competitive forces as it works to attract new Members and trading volume and maintain participation from existing participants. While the Exchange has been able to rapidly grow its market share since its launch in September 2020, MEMX operates only a single U.S. equities exchange with market share that remains significantly lower than the market share of the largest exchange groups. As noted above, until April of this year, MEMX did not charge fees for market data provided by the Exchange. The objective of this approach was to eliminate any fee-based barriers for Members when MEMX launched as a national securities exchange in 2020, which the Exchange believes has been helpful in its ability to attract order flow as a new exchange. The Exchange also did not initially charge for market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services. The Exchange believes that its proposed approach to market data fees is reasonable based on the existence of competition, a comparison to competitors and the cost analysis presented below.

The Exchange is not required to make the Exchange Data Feeds available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the Exchange Data Feeds. Firms that choose to subscribe to the Exchange Data Feeds do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the Exchange Data Feeds or any other similar products are attractively priced.

Because the Exchange Data Feeds have not been previously subject to fees, the Exchange did not know the impact of the proposed fees on data recipients at the time of the Initial Proposal but expected that subscribers may choose to reduce or eliminate their use of MEMX data. The Exchange now has additional data regarding the impact of fees for Exchange Data Feeds. Specifically, current subscribers to the Exchange Data Feeds have indeed changed their behavior in response to the imposition of fees as predicted in the Initial Proposal. Following the date that fees for the Exchange Data Feeds were officially announced, fifteen (15) out of seventy-nine (79) subscribers, representing 19% of the subscribers to such data feeds, modified or canceled their subscriptions before the fees went into effect. In each instance, the subscriber told the Exchange that the reason for modifying or cancelling its subscription was the imminent imposition of fees. These modifications and cancellations are evidence that subscribing to the Exchange Data Feeds is discretionary, that each customer makes the decision whether to subscribe based on its own analysis of the benefits and costs to itself, and that customers can and do make those decisions quickly based on reactions to fee changes. Prior to the imposition of fees, four (4) customers (or 5% of market data subscribers) informed the Exchange that if the Exchange imposes the fees as proposed, such customers will limit their subscription the MEMOIR Top feed and/or the MEMOIR Last Sale feed, rather than the MEMOIR Depth feed, which is more expensive under the proposed fees. Notably, three (3) of these customers are active trading participants on the Exchange and have continued to participate on the Exchange without use of the Exchange's MEMOIR Depth feed. In addition, eleven (11) customers of the Exchange that were subscribed to receive Exchange Data Feeds have cancelled their subscriptions to such data feeds entirely (representing approximately 14% of market data subscribers). Five (5) of the eleven (11) customers that have cancelled all subscriptions to Exchange Data Feeds actively trade on the Exchange and have informed the Exchange that they will rely instead on consolidated data distributed pursuant to NMS Plans (*i.e.,* ''SIP data'') to participate on the Exchange. This is clear evidence that the availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices for the Exchange Data Feeds.[22]

The Exchange intentionally adopted fees that it believed were reasonable and would not result in the Exchange losing market share. In fact, despite the modifications and cancellations described above, the Exchange has not lost market share from such market participants. Rather, their participation has remained similar to that on the Exchange prior to the imposition of fees and resulting changes to their market data subscriptions. However, the Exchange continues to believe that a data recipient that chose to discontinue subscribing to the Exchange's Data Feeds could also choose to shift order flow away from the Exchange and, given the current competitive environment, if data recipients had both discontinued the product and shifted order flow away from the Exchange, the Exchange would have had to reevaluate the fees and file a separate proposed rule change to amend its fees. The Exchange believes that the majority of data subscribers have maintained both their subscriptions to Exchange Data Feeds and their market share on the Exchange due to the overall reasonability of the proposed fees.

Had the proposed fees for the Exchange Data Feeds instead been unreasonable, the Exchange believes it would have seen additional modifications or cancellations to subscriptions to the Exchange Data Feeds and this may have further resulted in a loss of market share. As the Exchange has intentionally avoided imposing unreasonable fees, consistent with its obligations as a registered national securities exchange, the Exchange cannot present statistical evidence to support its understanding of how market participants would have reacted to the imposition of such fees. Indeed, adopting fees that are unreasonable in order to prove that the Exchange's market data is subject to competitive forces, would contradict the Exchange's responsibilities under Section 6(b)(4) of the Exchange Act, and would have the paradoxical effect of weakening competition in the market by harming the competitive standing of a new exchange entrant that has actively sought to increase competition among U.S. equities exchanges.

Additional Discussion—Comparison With Other Exchanges

The proposed fee structure is not novel but is instead comparable to the fee structure currently in place for the equities exchanges operated by Cboe Global Markets, Inc., in particular

[22] The Exchange notes that the remaining customers that modified or cancelled their subscriptions to the Exchange Data Feeds (seven customers total) are not trading participants on the Exchange and likely subscribed to the Exchange Data Feeds initially because they were free but determined to cancel such subscriptions now that the Exchange is charging market data fees.

BZX.[23] As noted above, in January 2022, MEMX had 4.2% market share; for that same month, BZX had 5.5% market share.[24] The Exchange is proposing fees for its Exchange Data Feeds that are similar in structure to BZX and rates that are equal to, or in most cases lower, than the rates data recipients pay for comparable data feeds from BZX.[25] The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca[26] and Nasdaq.[27] However, the Exchange has focused its comparison on BZX because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges.[28]

The fees for the BZX Depth feed—which like the MEMOIR Depth feed, includes top of book, depth of book, trades, and security status messages—consist of an internal distributor access fee of $1,500 per month (the same as the Exchange's proposed rate), an external distributor access fee of $5,000 per month (two times the Exchange's proposed rate), a non-display usage fee for non-Trading Platforms of $2,000 per month ($500 more than the Exchange's proposed rate), a non-display usage fee for Trading Platforms of $5,000 per month ($1,000 more than the Exchange's proposed rate), a Professional User fee (per User) of $40 per month ($10 more than the Exchange's proposed rate), and a Non-Professional User fee (per User) of $5 per month ($2 more than the Exchange's proposed rate).[29]

The comparisons of the MEMOIR Last Sale feed and MEMOIR Top feed to the BZX Last Sale feed and BZX Top feed, respectively, are similar in that BZX generally maintains the same fee structure proposed by the Exchange and BZX charges fees that are comparable to, but in most cases higher than, the Exchange's proposed fees. Notably, the User fees proposed by the Exchange for External Distributors of MEMOIR Last Sale and MEMOIR Top ($0.01 for both Professional Users and Non-Professional Users) are considerably lower than those charged by BZX for BZX Top and BZX Last Sale ($4 for Professional Users and $0.10 for Non-Professional Users).

By charging the same low rate for all Users of MEMOIR Top and MEMOIR Last Sale the Exchange believes it is proposing a structure that is not only lower cost but that will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. However, the Exchange does not believe this is equally true for MEMOIR Depth, as most individual Users of MEMOIR Depth are likely to be Professional Users and the Exchange has proposed pricing for such Users that the Exchange believes is reasonable given the value to Professional Users (*i.e.,* since Professional Users use data to participate in the markets as part of their full-time profession and earn compensation based on their employment). While the Exchange would prefer the simplicity of a single fee, similar to that imposed for Professional Users and Non-Professional Users, as that would reduce audit risk and simplify reporting, the proposed fee for Professional Users if also applied to Non-Professional Users would be significantly higher than other exchanges charge. The Exchange reiterates that it does not anticipate many Non-Professional Users to subscribe to MEMOIR Depth. In fact, though data recipient reporting is still being completed and validated for the first billing cycle, the Exchange is only aware of a single Non-Professional User (*i.e.,* one User) that is reported to receive MEMOIR Depth.

Additional Discussion—Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for market data, the Exchange has

[23] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[24] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[25] The Exchange notes that although no fee proposed by the Exchange is higher than the fee charged for BZX for a comparable data product, under certain fact patterns a BZX data recipient could pay a lower rate than that charged by the Exchange. For instance, while the Exchange has proposed to adopt identical fees to those charged for internal distribution of MEMOIR Top as compared to BZX Top ($750 per month) and for internal distribution of MEMOIR Last Sale as compared to BZX Last Sale ($500 per month), BZX permits a data recipient who takes both feeds to pay only one fee and, upon request, to receive the other data feed free of charge. *See* BZX Fee Schedule, Market Data Fees, BZX Depth, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.* Because the Exchange has not proposed such a discount, a data recipient taking both MEMOIR TOP and MEMOIR Last Sale would pay more ($1,250 per month) than they would to take comparable data feeds from BZX ($750 per month).

[26] Fees for the NYSE Arca Integrated Feed, which is the comparable product to MEMOIR Depth, are $3,000 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for its Integrated Feed, NYSE Arca charges for three different categories of non-display usage, each of which is $10,500 and each of which can be charged to the same firm more than one time (*e.g.,* a customer operating a Trading Platform would pay $10,500 compared to the Exchange's proposed fee of $4,000 but would also pay for each Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange; if that customer also uses the data for the other categories of non-display usage they would also pay $10,500 for each other category of usage, whereas the Exchange would only charge $1,500 for any non-display usage other than operating a Trading Platform). Finally, the NYSE Arca Integrated Feed user fee for pro devices is $60 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the NYSE Arca Integrated user fee for non-pro devices is $20 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.*

[27] Fees for the Nasdaq TotalView data feed, which is the comparable product to MEMOIR Depth, are $1,500 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for TotalView, Nasdaq charges Trading Platforms $5,000 compared to the Exchange's proposal of $4,000, and, like NYSE Arca, charges customers per Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange. Nasdaq also requires users to report and pay usage fees for non-display access at levels of from $375 per subscriber for smaller firms with 39 or fewer subscribers to $75,000 per firm for a larger firm with over 250 subscribers. The Exchange does not require counting of devices or users for non-display purposes and instead has proposed flat fee of $1,500 for non-display usage not by Trading Platforms. Finally, the Nasdaq TotalView user fee for professional subscribers is $76 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the Nasdaq TotalView user fee for non-professional subscribers is $15 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[28] *See supra* notes 26 and 27.

[29] *See* BZX Fee Schedule, Market Data Fees, BZX Depth, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.* The Exchange notes that there are differences between the structure of BZX Depth fees and the proposed fees for MEMOIR Depth, including that the Exchange has proposed a Digital Media Enterprise License for MEMOIR Depth but a comparable license is not available from BZX. Additionally, BZX maintains a general enterprise license for User fees, similar to that proposed by the Exchange for MEMOIR Top and MEMOIR Last Sale, but the Exchange has not proposed adding a general Enterprise license at this time.

sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[30] and Rule 19b–4 thereunder,[31] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[32] which requires, among other things, that exchange fees be reasonable and equitably allocated,[33] not designed to permit unfair discrimination,[34] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[35] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[36]

In October 2021, MEMX completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis''). The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transactions, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). In contrast, costs that are driven largely by client activity (*e.g.,* message rates), were not allocated to physical connectivity at all but were allocated primarily to the provision of transaction execution and market data services (90%) with a smaller allocation to application sessions (10%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue.

The Exchange recently filed to adopt fees for connectivity services, to which the Exchange allocated a monthly aggregate monthly cost of $1,143,715.[37] Based on the pricing adopted by the Exchange, the Exchange estimated it would generate monthly revenue of $1,233,750 from connectivity services (*i.e.,* physical connections and application sessions), providing cost recovery to the Exchange for the aggregate costs of offering connectivity services plus approximately 8% margin. Thus far, fees for connectivity services have generated revenues consistent with the Exchange's estimates.

The Exchange notes that it is difficult, if not impossible, to purely split the costs of generating and producing market data and the costs associated with operation of the system that processes (and displays through market data) orders, cancellations, and transactions and performs related functions (collectively, together with market data, ''Transaction Services''). Instead, as described below, the Exchange believes its costs for providing Transaction Services, including market data, are inextricably linked, and thus the cost analysis below and corollary margin discussion includes all Transaction Services.

Through the Exchange's extensive Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of Transaction Services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of Transaction Services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to Transaction Services. In turn, the Exchange allocated certain costs more to Transaction Services than other services, while certain costs were only allocated to such services at a very low percentage, using consistent allocation methodologies as described above. Based on its analysis, MEMX calculated its aggregate monthly costs for providing Transaction Services, at $2,797,265. The Exchange expects to recoup the majority of this cost from transaction fees and revenues from the public data feeds in which the Exchange participates and receives revenues (*i.e.,* the SIPs). As such, the Exchange has not determined it necessary to charge higher fees for the Exchange Data Feeds than proposed, but instead has proposed what it believes are relatively low-cost options to receive and use Exchange Data Feeds. However, in order to cover operating costs and earn a reasonable profit on its market data the Exchange has determined it necessary to charge some fees for proprietary data, and, as such, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), as set forth above.

Costs Related To Offering Transaction Services

The following chart details the individual line-item (monthly) costs considered by MEMX to be related to offering Transaction Services (transactions and market data) to its

[30] 15 U.S.C. 78s(b)(1).

[31] 17 CFR 240.19b–4.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[37] *See* Securities Exchange Act Release Nos. 93937 (January 10, 2022), 87 FR 2466 (January 14, 2022) (SR–MEMX–2021–22); 94419 (March 15, 2022), 87 FR 16046 (March 21, 2022) (SR–MEMX–2022–02); 94924 (May 16, 2022) (SR–MEMX–2022–13) (as the fees adopted have remained the same and the Exchange has filed since January of 2022, these filings are referred to generally hereafter as the ''Connectivity Filing'').

Members and other customers as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 77.8% of its overall Human Resources cost to offering Transaction Services).

Costs drivers [38]	Costs	% of all
Human Resources	$1,480,822	77.8
Connectivity (external fees, cabling, switches, etc.)	48,480	22.4
Data Center	65,538	22.4
External Market Data	133,266	92.5
Hardware and Software Licenses and Consulting	331,722	88.7
Monthly Depreciation	393,830	73.2
Allocated Shared Expenses	343,607	70.6
Total	2,797,265	70.7

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include directly providing services necessary to offer Transaction Services, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it has fewer than seventy (70) employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing Transaction Services, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Transaction Services. The Exchange notes that senior level executives were allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing Transaction Services. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches required to operate the Exchange. The Exchange notes that it previously labeled this line item as ''Infrastructure and Connectivity'' but has eliminated the reference to Infrastructure because several other line-item costs could be considered infrastructure given the generality of that term. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The majority of the Exchange's Connectivity cost was allocated to physical connectivity (75%), as set forth in the Connectivity Filing. The remainder of the Exchange's Connectivity cost was allocated between Transaction Services (22.4%) and application sessions (2.6%).

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Transaction Services in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). Similar to the Connectivity cost described above, the majority of the Exchange's Data Center cost was allocated to physical connectivity (75%), as set forth in the Connectivity Filing. The remainder of the Exchange's Data Center cost was allocated between Transaction Services (22.4%) and application sessions (2.6%).

External Market Data

External Market Data Costs includes fees paid to third parties, including other exchanges and the SIPs under the consolidated plans, to receive and consume market data necessary to provide Transaction Services.

Hardware and Software Licenses and Consulting

Hardware and Software Licenses and Consulting includes hardware and software licenses used to operate and monitor physical assets necessary to offer Transaction Services. This line-item also includes the cost of certain third-party consultants used by the Exchange to help test and review systems necessary to offering Transaction Services.[39]

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The depreciation cost also includes depreciated software that is necessary to run the Exchange. As noted above, the Exchange allocated 73.2% of all depreciation costs, including both hardware and software depreciation, to providing Transaction Services.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall

[38] The Exchange notes that the total monthly cost set forth for Transaction Services ($2,797,265) is the same as that used for the Initial Proposal; however, the Exchange has modified the categorization of such fees in the table above as such categorization was inconsistent when compared to the categorization used in the Connectivity Filing. In order to ensure a consistent presentation and description of the Cost Analysis and allocation methodology, the revised chart above corrects these inconsistencies to align with the categorization used in the Connectivity Filing.

[39] The Exchange notes that in the Initial Proposal it included technology Consulting costs as a separate line-item but has included such costs along with Hardware and Software Licenses in this proposal for consistency with the Connectivity Filing.

Transaction Services costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Transaction Services. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, regulatory costs,[40] professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost was allocated to providing Transaction Services.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of the Connectivity Filing and this filing proposing fees for Exchange Data Feeds. For instance, as described in the Connectivity Filing, in calculating the Human Resources expenses to be allocated to physical connections, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (75%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 2.5% to application sessions and the remaining 22.5% was allocated to transactions and market data.

In total, again as explained in the Connectivity Filing, the Exchange allocated 13.8% of its personnel costs to providing physical connections and 7.7% of its personnel costs to providing application sessions, for a total allocation of 21.5% Human Resources expense to provide connectivity services. In turn, the Exchange allocated the remaining 78.5% of its Human Resources expense to Membership (less than 1%) and the majority to Transaction Services (77.8%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including Transaction Services, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the Exchange. Without this equipment, the Exchange would not be able to operate the Exchange and provide Transaction Services to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing Transaction Services, but instead allocated approximately 73% of the Exchange's overall depreciation and amortization expense to Transaction Services.

The Exchange anticipates that the proposed fees for Exchange Data Feeds will generate approximately $280,000 based on initial reporting that has taken place since the Exchange commenced billing for such data feeds. The proposed fees for Exchange Data Feeds are designed to permit the Exchange to cover the costs allocated to providing Transaction Services with a markup that the Exchange believes is modest (approximately 10.1%), which the Exchange believes is fair and reasonable after taking into account the costs related to Transaction Services that the Exchange has previously borne completely on its own and help fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that prior to April of this year the Exchange has not previously charged any fees for Exchange Data Feeds and its allocation of costs to Exchange Data Feeds was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

Looking at the Exchange's operations holistically, the total monthly costs to the Exchange for offering core services is $3,954,537. The Exchange again notes that it anticipates that the proposed fees for Exchange Data Feeds will generate approximately $280,000 based on initial reporting that has taken place since the Exchange commenced billing for such data feeds. Incorporating this amount into the Exchange's overall projected revenue, the Exchange anticipates monthly revenue of $4,326,950 from all sources (*i.e.,* connectivity fees and membership fees that were introduced in January 2022, transaction fees, and revenue from market data, both through the fees proposed herein and through the revenue received from the SIPs). As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 9.4% margin on its operations as a whole. As noted above, the Exchange believes its profit margin for Transaction Services will be approximately 10.1%. The Exchange believes that both of these amounts are reasonable.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. As a new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the Exchange Data Feeds, the Exchange will have to be successful in retaining existing subscribers and obtaining new subscribers to the Exchange Data Feeds. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

To the extent the Exchange is successful in gaining market share, improving its net capture on transaction fees, encouraging new subscribers to subscribe to the Exchange Data Feeds, and other developments that would help to increase Exchange revenues, the Exchange does not believe it should be penalized for such success. The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost

[40] The Exchange notes that in the Initial Proposal it included Regulatory Costs as a separate line-item but has included such costs in Allocated Shared Expenses in this proposal for consistency with the Connectivity Filing.

Analysis and related projections demonstrate this fact.

The Exchange notes that the Cost Analysis was based on the Exchange's first year of operations and projections for the current year. As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Exchange Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Exchange Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [41] of the Act in general, and furthers the objectives of Section 6(b)(4) [42] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [43] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [44]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [45]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [46]

In this competitive marketplace, the Exchange's executed trading volume has grown from 0% market share to over 4% market share in less than one and a half years and the Exchange believes that it is reasonable to begin charging fees for the Exchange Data Feeds. One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure designed to permit the Exchange to cover certain fixed costs that it incurs for providing market data, with fees that are discounted when compared to products and services offered by competitors.[47]

The Exchange is not aware of any evidence that a market share of approximately 4% provides the Exchange with supra-competitive pricing power because, as shown elsewhere, market participants (even those that trade on the Exchange) are not required to subscribe to the Exchange Data Feeds, and if they do so, have a choice with respect to the Exchange Data Feed(s) to which they will subscribe. As noted above, when the Exchange announced that it would charge for the Exchange Data Feeds, 19% of its subscribers either modified or cancelled their subscriptions to Exchange Data Feeds. While some of these subscribers do not actively participate by trading on the Exchange and likely subscribed to the Exchange Data Feeds because they were offered free of charge, several of the subscribers that modified or cancelled their subscriptions are in fact Members that trade on the Exchange. Specifically, five (5) subscribers that actively participate on the Exchange have cancelled all subscriptions to the Exchange Data Feeds and have informed the Exchange that they will instead utilize SIP data to trade on the Exchange. In addition, three (3) subscribers that actively participate on the Exchange have discontinued their subscription to receive the MEMOIR Depth feed and have informed the Exchange that they will instead use the less expensive MEMOIR Top feed to trade on the Exchange (the Exchange notes that two of these subscribers have also maintained their subscriptions to the MEMOIR Last Sale feed).

[41] 15 U.S.C. 78f.

[42] 15 U.S.C. 78f(b)(4).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[45] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''NetCoalition I'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[46] *Id.* at 535.

[47] *See supra* notes 26–27; *see supra* note 29 and accompanying text.

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, consistent with the decisions in *Susquehanna Int'l Grp., LLC* v. *SEC*[48] and *In the Matter of the Application of Securities Industry and Financial Markets Ass'n for Review of Action taken by NYSE Arca, Inc. and Nasdaq Stock Market, LLC,*[49] the Commission considers whether the SRO has provided evidence in its filing that: (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not previously charged fees for market data but commenced charging in April of this year. As discussed in the purpose section of this proposed rule change, while the Exchange intentionally adopted fees that it believes are reasonable and would not result in a loss of market share, consistent with its obligations as a national securities exchange under Section 6(b)(4) of the Act, the Exchange continues to believe that competitive forces are in effect and that if the proposed fees for the Exchange Data Feeds were unreasonable that the Exchange would lose current or prospective Members and market share. Further, the Exchange has conducted a comprehensive Cost Analysis to determine the reasonability of its proposed fees, including that the Exchange will not take supra-competitive profits.

1. The Proposed Fees Are Constrained by Significant Competitive Forces

a. Exchange Market Data Fees Are Constrained by Competition

The Commission itself has recognized that the market for trading services in NMS stocks has become ''more fragmented and competitive.''[50] The Commission's Division of Trading and Markets has also recognized that with so many ''operating equities exchanges and dozens of ATSs, there is vigorous price competition among the U.S. equity markets and, as a result, [transaction] fees are tailored and frequently modified to attract particular types of order flow, some of which is highly fluid and price sensitive.''[51] Indeed, as noted above, equity trading is currently dispersed across 16 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. While the competitive environment described above and the Commission's statements related thereto are primarily regarding market share and trading volumes, and not market data specifically, the Exchange believes that competition does constrain the Exchange's ability to set market data prices, as described in this proposal.

Further, low barriers to entry mean that new exchanges like the Exchange may rapidly enter the market and offer competition with the Exchange. Due to the ready availability of substitutes and the low cost to move order flow to those substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to competitors with more attractive pricing. Indeed, as described above, at least eight Members trade on the Exchange either by using the lower cost MEMOIR Top feed (some in combination with MEMOIR Last Sale) or without use of any Exchange Data Feed (*i.e.,* using SIP data). Although the various exchanges may differ in their strategies for pricing their market data products and their transaction fees for trades—with some offering low-cost market data with higher trading costs, and others charging more for market data and comparatively less for trading—all exchanges compete for the same pool of customers and must work to demonstrate to such customers that pricing is reasonable. The Exchange believes that the best way to do this is to provide transparency into the costs of producing and maintaining its services.

Commission staff noted in its Fee Guidance that, as an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, staff has said that it considers whether the evidence demonstrates that there are reasonable substitutes for the product or service that is the subject of a proposed fee. As noted elsewhere in this proposal, there is no regulatory requirement that any market participant subscribe to any Exchange Data Feeds or a particular Exchange Data Feed. To demonstrate substitutability with tangible evidence, as noted above, five (5) Members that actively trade on the Exchange have determined to the SIPs as a substitute for the Exchange's Data Feeds but have continued trading on the Exchange while three (3) Members that actively trade on the Exchange have determined to use lower cost Exchange Data Feeds (*i.e.,* MEMOIR Top or MEMOIR Top in conjunction with MEMOIR Last Sale) instead of the MEMOIR Depth feed.

The Exchange believes the proposed fees are reasonable because in setting them, the Exchange is constrained by the availability of numerous competitors offering market data products and trading services. Such substitutes need not be identical, but only substantially similar to the product at hand. More specifically, in setting fees for the Exchange Data Feeds, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of a large number of alternative execution venues to use instead of the Exchange. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of competition ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market in which it operates.

b. Exchange Data Feeds Are Optional Market Data Products

Subscribing to the Exchange Data Feeds is entirely optional. The Exchange is not required to make the Exchange Data Feeds available to any customers, nor is any customer required to purchase any Exchange Data Feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfill

[48] 866 F.3d 442 (D.C. Cir. 2017).

[49] Securities Exchange Act Release No. 84432 (October 16, 2018).

[50] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18).

[51] Commission Division of Trading and Markets, Memorandum to EMSAC, dated October 20, 2015, available here: *https://www.sec.gov/spotlight/emsac/memo-maker-taker-feeson-equities-exchanges.pdf.*

regulatory obligations,[52] a customer's decision whether to purchase any Exchange Data Feed is entirely discretionary. Most Firms that choose to subscribe to an Exchange Data Feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange for order flow. Such firms are able to determine for themselves whether a particular Exchange Data Feed is necessary for their business needs, and if so, whether or not it is attractively priced. If an Exchange Data Feed does not provide sufficient value to a Firm based on the uses such Firm may have for it, such Firm may simply choose to conduct their business operations in ways that do not use the applicable Exchange Data Feed. Again, the Exchange has demonstrated above that several Members have in fact made this determination and trade on the Exchange without use of Exchange Data Feeds or with use of one or more of the lower cost Exchange Data Feeds and not MEMOIR Depth.

Specifically related to the Exchange Data Feed with the highest rates, the MEMOIR Depth Feed, even if a Firm determines that the fees for such feed are too high, customers can access much of the same data at lower rates by subscribing to the MEMOIR Top feed (which includes best-bid-and-offer information for the Exchange on a real-time basis) and MEMOIR Last Sale (which includes last-sale information for the Exchange on a real-time basis). MEMX top-of-book quotation information and last-sale information is also available on the consolidated SIP feeds.[53] In this way, MEMOIR Top, MEMOIR Last Sale, and SIP data products are all substitutes for a significant portion of the data available on the MEMOIR Depth Feed, and SIP data products are also a substitute for a significant portion of data available on the MEMOIR Top and MEMOIR Last Sale feeds. As shown above, several Members that trade on the Exchange discontinued subscriptions to MEMOIR Depth and instead use MEMOIR Top (or MEMOIR Top combined with MEMOIR Last Sale) as a substitute while others discontinued their subscription to Exchange Data Feeds altogether, using SIP data as a substitute. Furthermore, several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds for purposes of executing orders on their exchanges, order routing, and regulatory purposes,[54] even though the Exchange subscribes to and pays for their comparable market data products.[55] As such competitors are required by Regulation NMS to honor (*i.e.,* not trade through, lock or cross) protected quotations[56] displayed by the Exchange and by rule they offer routing services including routing to the Exchange,[57] these competitors must have determined it possible to meet these obligations through use of SIP data in lieu of subscribing to any Exchange Data Feed.

The only content available on the MEMOIR Depth Feed that is not available on these other products is the order-by-order look at the MEMX order book, which provides information about depth-of-book on the Exchange. The Exchange has been a vocal advocate in support of the Commission's Market Data Infrastructure Rule, which mandates the creation of a ''SIP Premium'' product that would include depth-of-book information on the consolidated market data feeds.[58] The Exchange has also been a vocal advocate in support of pricing new content for the consolidated market data feeds in a reasonable and competitive manner that would encourage the use of a SIP Premium product and other content to be provided via the SIPs.[59] Future products such as SIP Premium would include not only integrated depth-of-book information from MEMX, but all other exchanges as well, and would further constrain the Exchange's ability to price any Exchange Data Feed, including MEMOIR Depth, at a supra-competitive price. However, even in the absence of such products, the Exchange believes that use of the Exchange Data Feeds is entirely optional, as described above.

Further, in the case of products that are also redistributed through market data vendors such as Bloomberg and Refinitiv, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Even in the absence of fees for the Exchange Data Feeds, many major market data vendors have not elected to make available the Exchange Data Feeds and likely will not unless their customers request it, and customers will not elect to pay the proposed fees unless the applicable Exchange Data Feed can provide value by sufficiently increasing revenues or reducing costs to the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

In setting the proposed fees for the Exchange Data Feeds, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. As described elsewhere in this proposal, the Exchange also considered the Cost Analysis conducted by the Exchange and believes it has demonstrated that the fees will not result in any supra-competitive profit. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of alternatives to the Exchange and the continued availability of choice between different Exchange Data Feeds, other exchanges' proprietary data products, and the SIPs ensure that the Exchange cannot set unreasonable fees when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the

[52] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some competing exchanges, broker-dealers and ATSs have chosen not to do so.

[53] Broadly speaking, the self-regulatory organizations (''SROs'') administer the SIPs and set pricing. Each SIP charges its own fees, which are determined by the operating committees of each SIP subject to the SEC rule filing process. While MEMX is a member of the operating committee of each SIP, it has only one vote and does not exercise control over SIP pricing. MEMX also notes that the SIPs charge pursuant to a different pricing structure than the pricing structure proposed by the Exchange in this filing.

[54] *See, e.g.,* NYSE Arca Rule 7.37–E.(d), Order Execution and Routing, and BZX Rule 11.21, each of which discloses the data feeds used by each respective exchange and state that SIP products are used with respect to MEMX.

[55] *See* MEMX Rule 13.4, Usage of Data Feeds, which discloses that the Exchange uses proprietary data feeds for all exchanges that offer them.

[56] *See* Rule 600(b)(71) of Regulation NMS, 17 CFR 242.600(b)(17).

[57] See NYSE Arca Rule 7.37–E.(b), describing routing services offered by NYSE Arca; BZX Rule 11.13(b), describing routing services offered by BZX.

[58] *See, e.g.,* Letter from Anders Franzon, General Counsel, MEMX LLC, dated May 26, 2020, regarding proposed Market Data Infrastructure rule, available at: *https://www.sec.gov/comments/s7-03-20/s70320-7235183-217090.pdf.*

[59] *See, e.g.,* Letter from Adrian Griffiths, Head of Market Structure, MEMX LLC, dated November 8, 2021, regarding proposed fees for consolidated data provided pursuant to CTA/CQ/UTP Plans, available at: *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103-9403088-262830.pdf.*

returns that any particular vendor or data recipient would achieve through the purchase.

c. The Proposed Fees for Exchange Data Feeds Will Not Result in Supra-Competitive Profits

Commission staff previously noted that the generation of supra-competitive profits is one of several potential factors in considering whether an exchange's proposed fees are consistent with the Act.[60] As described in the Fee Guidance, the term ''supra-competitive profits'' refers to profits that exceed the profits that can be obtained in a competitive market. The proposed fee structure would not result in excessive pricing or supra-competitive profits for the Exchange. The proposed fee structure is merely designed to permit the Exchange to cover the costs allocated to providing Transaction Services with a modest markup (approximately 10.1%), which the Exchange believes is fair and reasonable after taking into account the costs related to Transaction Services that the Exchange has previously borne completely on its own and to help fund future expenditures (increased costs, improvements, etc.). The Exchange believes that this is fair, reasonable, and equitable. Accordingly, the Exchange believes that its proposal is consistent with Section 6(b)(4)[61] of the Act because the proposed fees will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit.

The proposed fees for Exchange Data Feeds will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide Transaction Services, including market data. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by adopting fees for the Exchange Data Feeds. As detailed above, the Exchange has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue.

The Exchange expects to recoup the majority of its estimated aggregate monthly costs for providing Transaction Services from transaction fees and revenues from the public data feeds in which the Exchange participates and receives revenues (*i.e.,* the SIPs). As such, the Exchange has not determined it necessary to charge higher fees for the Exchange Data Feeds than proposed, but instead has proposed what it believes are relatively low-cost options to receive and use Exchange Data Feeds. However, in order to cover operating costs and earn a reasonable profit on its market data the Exchange has determined it necessary to charge some fees for proprietary data, and, as such, the Exchange is proposing to charge the fees described herein for the Exchange Data Feeds. In addition, this revenue will allow the Exchange to continue to offer, to enhance, and to continually refresh its infrastructure as necessary to offer a state-of-the-art trading platform. The Exchange believes that, consistent with the Act, it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above, including the relatively low cost to participate on the Exchange[62] and the need for the Exchange to maintain a highly performant and stable platform to allow Members to transact with determinism.

The Exchange's Cost Analysis estimates the costs to provide Transaction Services at $2,797,265. Based on current subscriptions to Exchange Data Feeds (but without definitive data regarding User counts) and projections related to transaction activity and volumes, the Exchange estimates it will generate monthly revenues of approximately $280,000 from the Exchange Data Feeds and $3,080,000 from providing Transaction Services overall (on a monthly basis). This represents a modest profit when compared to the cost of providing Transaction Services (approximately 10.1%). Further, as noted above, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues from all sources, the Exchange would earn approximately 9.4% margin on its operations as a whole. The Exchange believes that this amount is reasonable and cannot be considered to be supra-competitive profit.

2. The Proposed Fees Are Reasonable

The specific fees that the Exchange proposes for the Exchange Data Feeds are reasonable for the following additional reasons.

Overall. The Exchange believes the proposed fees for the Exchange Data Feeds are reasonable when compared to fees for comparable products, such as the BZX Depth feed, BZX Top feed, and BZX Last Sale feed, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Exchange Data Feeds.[63] Specifically with respect to the MEMOIR Depth feed, the Exchange believes that the proposed fees for such feed are reasonable because they represent not only the value of the data available from the MEMOIR Top and MEMOIR Last Sale data feeds, which have lower proposed fees, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined). Finally, the Exchange believes that its Cost Analysis and holistic approach thereto demonstrates that the proposed fees for the Exchange Data Feeds would not result in supra-competitive profits.

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the Exchange Data Feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees for MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale are reasonable as they are the same

[60] *See* Fee Guidance, *supra* note 36.

[61] 15 U.S.C. 78f(b)(4).

[62] The Exchange notes that while it does impose a $200 per month Membership Fee, the Exchange does not charge several other types of fees charged by competitors to the Exchange, including fees for market participant identifiers (''MPIDs''), fees for risk management tools, application fees, or fees to access the Exchange User portal.

[63] *See supra* notes 26–27; *see supra* note 29 and accompanying text.

amounts charged by at least one other exchange of comparable size for comparable data products,[64] and are lower than the fees charged by several other exchanges for comparable data products.[65]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the Exchange Data Feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fee would be charged only once per month to each vendor account that redistributes any Exchange Data Feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange also believes the proposed monthly External Distribution fee for the MEMOIR Depth Feed is reasonable because it is half the amount of the fee charged by at least one other exchange of comparable size for a comparable data product,[66] and significantly less than the amount charged by several other exchanges for comparable data products.[67] Similarly, the Exchange believes the proposed monthly External Distribution fees for the MEMOIR TOP and MEMOIR Last Sale feeds are reasonable because they are discounted compared to same amounts charged by at least one other exchange of comparable size for comparable data products, and significantly less than the amount charged by several other exchanges for comparable data products.[68]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the MEMOIR Depth feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the Exchange Data Feeds by providing the same data that is available to Professional Users. The proposed monthly Professional User fee and monthly Non-Professional User fee are reasonable because they are lower than the fees charged by at least one other exchange of comparable size for comparable data products,[69] and significantly less than the amounts charged by several other exchanges for comparable data products.[70] The Exchange also believes it is reasonable to charge the same low per User fee of $0.01 for both Professional Users and Non-Professional Users receiving the MEMOIR Top and MEMOIR Last Sale feeds, as this is not only pricing such data at a much lower cost than other exchanges charge for comparable data feeds [71] but doing so will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and that requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. The Exchange also believes that the proposal to require reporting of individual Users, but not devices, is reasonable as this too will eliminate unnecessary audit risk that can arise when recipients are required to apply complex counting rules such as whether or not to count devices or whether an individual accessing the same data through multiple devices should be counted once or multiple times.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are reasonable, because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Usage fees reflect the significant value of the non-display data use to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate Trading Platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, several exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead categorizes different types of use. The Exchange proposes to distinguish between non-display use for the operation of a Trading Platform and other non-display use, which is similar to exchanges such as BZX and EDGX,[72] while other exchanges maintain additional categories and in many cases charge multiple times for different types of non-display use or the operation of multiple Trading Platforms.[73]

The Exchange believes that it is reasonable to segment the fee for non-display use into these two categories. As noted above, the uses to which customers can put the MEMOIR Depth feed are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because

[64] *See* BZX Fee Schedule available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[65] *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf;* Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[66] *See* BZX Fee Schedule available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[67] *See id.*

[68] *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf*; Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[69] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[70] *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf*; Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[71] *See id.*

[72] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*; EDGX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[73] *See supra* notes 26–27.

it reflects the actual value the customer derives from the data, based upon how the customer makes use of the data.

The Exchange believes that the proposed fees for non-display use other than operation of a Trading Platform is reasonable. These fees are comparable to, and lower than, the fees charged by at least one other exchange of comparable size for a comparable data product,[74] and significantly less than the amounts charged by several other exchanges for comparable data products.[75] The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using data on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. Further, in contrast to non-display use for operation of a Trading Platform, discussed below, the Exchange benefits from and wants to encourage other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance).

The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is reasonable to charge a higher monthly fee than for other non-display use because such use of the Exchange's data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. The Exchange also believes that it is reasonable to charge the proposed fees for non-display use for operation of a Trading Platform because the proposed fees are comparable to, and lower than, the fees charged at least one other exchange of comparable size for a comparable data product,[76] and significantly less than the amounts charged by several other exchanges for comparable data products, which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per Firm, as proposed by the Exchange.[77]

The proposed Non-Display Usage fees for the Exchange Data Feeds are also reasonable because they take into account the extra value of receiving the data for Non-Display Usage that includes a rich set of information including top of book quotations, depth-of-book quotations, executions and other information. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the MEMOIR Depth feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[78]

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the Exchange Data Feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Exchange Data Feeds. Any subscriber or vendor that chooses to subscribe to one or more Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Exchange Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fee. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds that choose to redistribute the feeds externally. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is equitable. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[79] Offering the MEMOIR Depth feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data

[74] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[75] *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf*; Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[76] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[77] *See supra* notes 26–27.

[78] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.''

[79] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange also believes it may be unreasonable to charge a Non-Professional User the same fee that it has proposed for Professional Users, as this fee would be higher than any other U.S. equities exchange charges to Non-Professional Users for receipt of a comparable data product. These User fees would be charged uniformly to all individuals that have access to the MEMOIR Depth feed based on the category of User. The Exchange also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are equitable because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers that use data for purposes other than operation of a Trading Platform as proposed because all such subscribers would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the BZX Depth feed but several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading platforms or for several types of non-display use.[80]

The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is equitable to charge a higher rate for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. Further, in contrast to non-display use for operation of a Trading Platform, the Exchange benefits from and wants to encourage other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance). The Exchange believes that it is equitable to charge a single fee per Firm rather than multiple fees for a Firm that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Exchange Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Exchange Data Feed(s). Any vendor or subscriber that chooses to subscribe to the Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fees for MEMOIR Depth are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the MEMOIR Top and/or MEMOIR Last Sale feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the MEMOIR Depth feed in order to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the MEMOIR Top and Last Sale data feeds, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for redistributing the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distribution than Internal Distribution is not unfairly discriminatory because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is not unfairly discriminatory. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[81] Offering the Exchange Data Feeds to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the Exchange Data Feeds based on the category of User. The Exchange

[80] *See supra,* notes 26–27.

[81] *See supra* note 79.

also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are not unfairly discriminatory because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are not unfairly discriminatory because they would require subscribers for non-display use to pay fees depending on their use of the data, either for operation of a Trading Platform or not, but would not impose multiple fees to the extent a Firm operates multiple Trading Platforms or has multiple different types of non-display use. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange also believes that, regarding non-display use for operation of a Trading Platform, it is not unreasonably discriminatory to charge a higher fee for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. The Exchange believes that it is not unreasonably discriminatory to charge a single fee for an operator of Trading Platforms that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor. The Exchange again notes that certain competitors to the Exchange charge for non-display usage per Trading Platform,[82] in contrast to the Exchange's proposal. In turn, to the extent they subscribe to Exchange Data Feeds, these same competitors will benefit from the Exchange's pricing model to the extent they operate multiple Trading Platforms (as most do) by paying a single fee rather than paying for each Trading Platform that they operate that consumes Exchange Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[83] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Since the pricing for the Exchange Data Feeds was announced by the Exchange, the Exchange has received no official complaints from Members, non-Members, or third-parties that redistribute the Exchange Data Feeds, that the Exchange's fees or the proposed fees for Exchange Data Feeds would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage relative to others. The Exchange does not believe that the proposed fees for Exchange Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Exchange Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Exchange Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Exchange Data Feeds consumed by various market participants and their usage thereof.

As noted above, the current subscribers to the Exchange Data Feeds began changing their behavior in response to the imposition of fees as predicted in the Initial Proposal and as described herein. Following the date that fees for the Exchange Data Feeds were officially announced, fifteen (15) out of seventy-nine (79) subscribers, representing 19% of the subscribers to such data feeds, modified or canceled their subscriptions before the fees went into effect. In each instance, the subscriber told the Exchange that the reason for modifying or cancelling its subscription was the imminent imposition of fees. These modifications and cancellations are evidence that subscribing to the Exchange Data Feeds is discretionary, that each customer makes the decision whether to subscribe based on its own analysis of the benefits and costs to itself, and that customers can and do make those decisions quickly based on reactions to fee changes. Prior to the imposition of fees, four (4) customers (or 5% of market data subscribers) informed the Exchange that if the Exchange imposes the fees as proposed, such customers will limit their subscription the MEMOIR Top feed and/or the MEMOIR Last Sale feed, rather than the MEMOIR Depth feed, which is more expensive under the proposed fees. Notably, three (3) of these customers are active trading participants on the Exchange and have continued to participate on the Exchange without use of the Exchange's MEMOIR Depth feed. In addition, eleven (11) customers of the Exchange that were subscribed to receive Exchange Data Feeds have cancelled their subscriptions to such data feeds entirely (representing approximately 14% of market data subscribers). Five (5) of the eleven (11) customers that have cancelled all subscriptions to Exchange Data Feeds actively trade on the Exchange and have informed the Exchange that they will rely instead on SIP data to participate on the Exchange. This is clear evidence that the availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices for the Exchange Data Feeds. The Exchange notes that the remaining customers that modified or cancelled their subscriptions to the Exchange Data Feeds (seven customers total) are not trading participants on the Exchange and likely subscribed to the Exchange Data Feeds initially because they were free but determined to cancel such subscriptions now that the Exchange is charging market data fees.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the Exchange Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants,

[82] *See supra* notes 26–27.

[83] 15 U.S.C. 78f(b)(8).

but with higher rates to connect.[84] The Exchange is also unaware of any assertion that the proposed fees for Exchange Data Feeds would somehow unduly impair its competition with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[85] and Rule 19b–4(f)(2)[86] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–14 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–MEMX–2022–14. 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–MEMX–2022–14 and should be submitted on or before June 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12401 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

[84] *See supra* notes 26–27; *see supra* note 29 and accompanying text.

[85] 15 U.S.C. 78s(b)(3)(A)(ii).

[86] 17 CFR 240.19b–4(f)(2).

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95035; File No. SR–CboeBYX–2021–028]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

June 3, 2022.

On November 22, 2021, Cboe BYX Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 28, 2022.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[10] The 180th day after publication of the proposed rule change is June 5, 2022. The Commission is extending the time period for approving or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93689 (December 1, 2021), 86 FR 69335 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebyx-2021-028/srcboebyx2021028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94009, 87 FR 4098 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94373, 87 FR 14060 (March 11, 2022).

[8] *See* Securities Exchange Act Release No. 94787 (April 22, 2022), 87 FR 25309.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Notice, *supra* note 3.

disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeBYX–2021–028), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12400 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95040; File No. 4–533]

Joint Industry Plan; Order Approving Amendment No. 4 to the National Market System Plan for the Selection and Reservation of Securities Symbols Submitted by The Nasdaq Stock Market LLC, BOX Exchange LLC, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., CBOE EDGX 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 PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

June 3, 2022.

I. Introduction

On February 11, 2021,[1] The Nasdaq Stock Market LLC (''Nasdaq''), on behalf of itself and the participants to the National Market System Plan for the Selection and Reservation of Securities Symbols (''Symbology Plan'' or ''Plan''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[3] a proposal to amend the Symbology Plan.[4] The proposal represents the fourth substantive amendment to the Plan (''Amendment'') and reflects changes unanimously approved by the Plan participants (''Participants'').[5] Amendment No. 4 was published for comment in the **Federal Register** on March 8, 2022.[6] On April 13, 2022, Nasdaq submitted a letter to the Commission related to Amendment No. 4, which corrected an error in the Plan document included in the original filing.[7] This Order approves Amendment No. 4 to the Plan as reflected in the Modification Letter.

II. Background and Description of the Proposal

A. Background

The Plan was created to establish a uniform system for the selection and reservation of securities symbols and sets forth, among other things, the process for securing symbol reservations, the use of a waiting list, the ability to request the release of a symbol, and the ability to reuse a symbol, provided that it does not create investor confusion. Currently, Section IV of the Plan outlines the procedures for the symbol reservation system, and provides Participants the ability to reserve 20 perpetual (''List A'') and 1,500 limited-time (''List B'') reservations, for 1-, 2-, and 3-character symbols, on the one hand, and also for 4- and 5-character symbols, on the other. For List B reservations, the Plan requires Plan Participants to have a reasonable basis to believe that it will use the symbol within 24 months in order to reserve a symbol, but does not include a requirement that such basis be furnished or that a symbol be reserved for a specific issuer. There is also a process for reserving symbols under the Plan, which provides for the use of a third-party processor and a symbol reservation database. The Plan also includes, among other things, provisions for the use of a waiting list, the right to reuse a symbol, the ability to request the release of a symbol, the terms of confidentiality, and the process for becoming a new Plan participant.[8]

B. Description of Proposal

In Amendment No. 4, the Participants propose to modify the Plan in several aspects: (1) to require the release of all perpetual (List A) reservations, except for those used for test symbols; (2) to increase the number of List B symbols that can be reserved for 1-, 2-, and 3-character symbols and for 4- and 5-character symbols, respectively, from 1,500 to 2,500 symbols; (3) to require a party making a List B reservation to specify confidentially an issuer associated with that reservation and to maintain documentation supporting that request; (4) to require List B reservations for exchange-traded products to be made at the request of the issuer (or its agent); (5) to require Participants to release any symbol that it no longer has a reasonable basis for believing that the issuer will list a security using the symbol; (6) to require a reservation for an issuer to be transferred to another Participant, if it decides to list on that Participant; (7) to prohibit the reservation of more than one symbol for a potential listing that is not an exchange-traded product; (8) to allow Participants who have reserved a symbol for one issuer to be on the waitlist for that symbol for another issuer; and (9) to eliminate the costs of entry for new Participants to the Plan, consistent with existing practice. In addition, Amendment No. 4 also includes several technical and

[1] *See* Letter from Jeffrey S. Davis, Senior Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission (Feb. 11, 2022).

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] The Plan was created to enhance the effectiveness and efficiency of the national market system and to provide for fair competition between the self-regulatory organizations that list equity securities by establishing a uniform system for the selection and reservation of securities symbols. The Plan, among other things, sets forth the process for securing perpetual and limited-time reservations, the use of a waiting list, the right to reuse a symbol and the ability to request the release of a symbol.

[5] The Plan Participants are BOX Exchange LLC, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., CBOE EDGX 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 PEARL, LLC, Nasdaq, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[6] *See* Securities Exchange Act Release No. 94351 (March 2, 2022), 87 FR 13027 (March 8, 2022) (''Amendment No. 4 Notice''). The Commission received comment letters that are not germane to the Amendment and are available on the Commission's website at: *https://www.sec.gov/comments/4-533/4-533.htm.*

[7] *See* Letter from Jeffrey S. Davis, Senior Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated April 13, 2022 (''Modification Letter''). In the Modification Letter, the Participants corrected the list of Participants that was submitted with the Amendment. The Plan submitted with the Amendment included two exchanges that are not currently Participants in the Plan. The Plan submitted with the Modification Letter reflects the current Participants in the Plan and made no other changes to the Amendment.

[8] *See* Securities Exchange Act Release No. 58904, 73 FR 67218 at 67222–23 (November 13, 2008) (File No. 4–533) (''Symbology Plan Approval Order'').

ministerial proposed changes to provide current information about the names and principal place of business of certain Participants to the Plan, and also makes changes to update outdated language in Sections IV(b)(1–3) and (c)(1) the Plan regarding reservations prior to the original effective date of the Symbology Plan.[9]

III. Discussion and Commission Findings

After careful review, the Commission is approving Amendment No. 4, as modified, for the reasons discussed below. Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.[10] Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission proposed amendments to an effective NMS plan,[11] and further provides that the Commission shall approve an amendment to an effective NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[12]

The Commission believes that Amendment No. 4, as modified, is consistent with the Act and meets the applicable standard provided in Rule 608 of Regulation NMS.[13] As described in the Notice, the Plan Participants seek to amend the Symbology Plan to eliminate perpetual reservations (except for test symbols), increase the number of List B, limited-time symbol reservations, and make certain other amendments to the Plan regarding the processes by which Plan Participants may make symbol reservations.

With respect to List A reservations, the Plan Participants have agreed to release all their perpetual reservations and eliminate all perpetual reservations, except for those used as test symbols. The Participants stated that elimination of perpetual reservations was proposed in connection with the changes to require that all reservations be made at the request of an issuer. The Commission believes that removing the List A perpetual reservations other than test symbols will help to ensure that Participants can only reserve symbols related to identified issuers, which should promote fair competition among exchanges that list securities. Ensuring that Participants can only reserve symbols related to identified issuers is also appropriate in the public interest because it should enable issuers to make listing decisions based on factors that relate to the quality of the listing markets, rather than on considerations of symbol reservation.

With respect to List B reservations, the Amendment proposes to amend Section IV(b)(1)(B) to increase the number of symbol reservations that a party can reserve from 1,500 to 2,500 symbols for symbols using one, two or three characters, on the one hand, and for symbols using four or five symbols, on the other hand. In the Notice, the Plan Participants stated that this increase is ''necessary given the substantial increase in the number of IPOs and other new listings,'' and noted that IPOs were at a 20-year low, with 62 IPOs that year, at the time the Symbology Plan was approved in 2008, whereas more recently, there were 480 and 1,058 IPOs in 2020 and 2021, respectively.[14] The Plan Participants also pointed to an increase in recent years in the popularity of SPACs, which has similarly necessitated the need to reserve of more symbols.[15] The Plan Participants stated that, given this current activity, the original 1,500 symbol reservation limits for one, two or three character symbols, on the one hand, and for four or five character symbols, on the other hand, are no longer appropriate. In approving the Symbology Plan in 2008, the Commission discussed the history of ticker symbols and noted that the increasing scarcity of available symbols highlighted the need for a NMS plan to efficiently and fairly manage the supply of ticker symbols.[16] At that time, the Commission believed that the allotment of 1,500 List B reservations for symbols using one, two or three characters, on the one hand, and for symbols using four or five symbols, on the other hand, was sufficient to allow Plan Participants to reserve ''a sufficient number of symbols in the short-term for any pending use.''[17] The Commission believes that it is appropriate for the maintenance of fair and orderly markets to increase the number of List B symbol reservations to accommodate recent listing activity.

The Plan Participants also seek to make certain other amendments to Section IV(b)(1)(B) of the Plan with respect to the process for symbol reservations, including specifying that: (i) no party shall make a List B reservation request with respect to a particular symbol unless said party has a reasonable basis to believe it will utilize such symbol within the next 24 months; (ii) each List B request made by a party for non-exchange traded products must be made in connection with the potential listing of a security on such party at the request of the issuer (or an agent of the issuer) of such security, and the reserving party must confidentially indicate the potential listing in the Symbol Reservation System and maintain documentation demonstrating that it has a reasonable basis to believe that it will utilize such symbol for the listing of such security within the next 24 months; (iii) all List B reservation requests made by a party for exchange-traded products must be made at the request of the issuer (or an agent of the issuer) of such security; (iv) the party shall release the symbol if it no longer reasonably believes that the issuer will list a security using the symbol; and (v) a party shall not reserve more than one symbol per potential security listing that is not an exchange-traded product.[18] The Plan Participants state that these changes are intended to ensure that each party reserves a symbol in connection with a potential listing. The Commission believes that the amendments to Section IV(b)(1)(B) that put in place requirements for the request of a symbol reservation are appropriate in the public interest because they should help to ensure that the Plan operates in a fair and orderly manner by requiring each party to reserve symbols in connection with a potential listing. In addition, sub clauses (iii) and (v) would put in place a process to allow exchanges to reserve multiple symbols at the request of an issuer for exchange-traded products that

[9] *See* Amendment No. 4 Notice, *supra* note 6, for a more detailed description of the proposed changes. *See also* Modification Letter, *supra* note 7.

[10] *See* 15 U.S.C. 78k–1(a)(3)(B).

[11] *See* 17 CFR 242.608.

[12] *See* 17 CFR 242.608(b)(2).

[13] *See* 17 CFR 242.608.

[14] *See* Notice, *supra,* at 13028.

[15] Specifically, according to the Participants, there were 613 SPAC IPOs in 2021 as compared to 248 SPAC IPOs in 2020, representing a 247% increase. *See id.*

[16] *See* Symbology Plan Approval Order, *supra* note 9, at 67219–20. In the Symbology Plan Approval Order, the Commission stated that several factors have been increasing the demand particularly for one, two and three character symbols, including: increased listings of innovative products such as exchange-traded funds; the move by Nasdaq to begin using one, two and three character symbols; and the proliferation of standardized options.

[17] *See* Symbology Plan Approval Order at 67225.

[18] A corresponding clarifying change is proposed to Section IV(b)(3)(C) to clarify that List B reservation requests must be submitted in accordance with sub clauses (i) to (v) of Section IV(b)(1)(B).

is listing multiple potential securities, as these issuers commonly issue more than one product with different root symbols, unlike corporate issuers who rely on the same root symbol even where they have multiple classes. The Commission believes that allowing exchanges to reserve multiple symbols for issuers of such exchange-traded products is appropriate in the public interest because it should reduce investor confusion by allowing related exchange-traded products to potentially have similar symbols. The Amendment also makes changes to the waitlist provision in Section IV(b)(6)(c) that relate to the new List B reservation process. Specifically, the Amendment would permit Participants that already have a symbol reserved for a potential issuer to be placed on the waitlist for the same symbol on behalf of another potential issuer. The Commission believes that this change should promote fair competition among the exchanges by allowing such Participant to be placed on the waitlist, similar to other Participants.

The Participants also propose to amend Section I(c) of the Plan to eliminate the costs of entry for new participants because, as the Amendment notes, the pro rata costs for new participants have been de minimis or zero in recent years. The Commission believes that amending Section I(c) of the Plan to eliminate such costs should remove impediments to, and perfect the mechanisms of, a national market system, by removing what has become an administrative burden for new participants. In addition, the Amendment makes other technical and ministerial changes to clarify provisions that pertain only to the initial operation of the Plan and to update Participant information.[19] The Commission believes that these changes are appropriate in the public interest and consistent with the Act, because they will provide clarifying and more accurate information about the existing practices under the Plan and also updated information about the Plan Participants.

For the reasons discussed, the Commission finds that Amendment No. 4 to the Plan, as reflected in the Modification Letter, is consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, Section 11A of the Act[20] and Rule 608[21] thereunder in that Amendment No. 4 is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[22] and Rule 608(b)(2) thereunder,[23] that Amendment No. 4 to the Plan, as modified, (File No. 4–533) is approved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12396 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

[19] *See* Modification Letter, *supra* note 7.

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 242.608.

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 242.608(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95034; File No. SR–CboeBZX–2021–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

June 3, 2022.

On November 17, 2021, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 28, 2022.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[10] The 180th day after publication of the proposed rule change is June 5, 2022. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2021–078), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12399 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93688 (December 1, 2021), 86 FR 69319 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2021-078/srcboebzx2021078.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94010, 87 FR 4075 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94372, 87 FR 14053 (March 11, 2022).

[8] *See* Securities Exchange Act Release No. 94788 (April 22, 2022), 87 FR 25328.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Notice, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95037; File No. SR–BOX–2022–08]

Self-Regulatory Organizations; BOX Exchange LLC.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 12140 (Imposition of Fines for Minor Rule Violations) To Expand the List of Violations Eligible for Disposition Under the Exchange's Minor Rule Violation Plan and Update the Fine Schedule Applicable to Certain Minor Rule Violations

June 3, 2022.

On March 31, 2022, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 12140 (Imposition of Fines for Minor Rule Violations), to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan (''MRVP'') and update the fine schedule applicable to minor rule violations related to certain rule violations. The proposed rule change was published for comment in the **Federal Register** on April 21, 2022.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is June 5, 2022. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates July 20, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2022–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12402 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94729 (April 15, 2022), 87 FR 23893. The Commission has received one comment on the proposal which does not relate to the substance of the proposed rule change. The comment letter is available at *https://www.sec.gov/comments/sr-box-2022-08/srbox202208.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95031; File No. 4–698]

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX, 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; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

June 3, 2022.

I. Introduction

On May 20, 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., Miami International Securities Exchange LLC, MEMX, 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; and 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 that would authorize CAT LLC to revise the Consolidated Audit Trail Reporter Agreement (the ''Reporter Agreement'') and the Consolidated Audit Trail Reporting Agent Agreement (the ''Reporting Agent Agreement'') as contained in *Appendix A,* attached hereto by: (1) removing the arbitration provision from each agreement and replacing it with a forum selection provision (the ''Forum Section Provision'') which would require that any dispute regarding CAT reporting be filed in a United States District Court for the Southern District of New York (the ''SDNY''), or, in the absence of federal subject matter jurisdiction, a New York State Supreme Court within the First Judicial Department; (2) adding a jury waiver provision; (3) adding a disclaimer of warranties clause; and (4) and revising the existing choice of law clause to provide that any dispute will be governed by federal law (in addition to New York law).[4] 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)(4) and (5) under the Exchange Act,[6] substantially as prepared and submitted by the Participants to the Commission.[7]

[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) (''Order Approving CAT NMS Plan'').

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission, dated May 20, 2022.

[5] 17 CFR 242.608.

[6] *See* 17 CFR 242.608(a)(4) and (a)(5).

[7] *See supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

A. Statement of Purpose of the Amendment to the CAT NMS Plan

The Proposed Amendment would ensure that a dispute arising out of CAT reporting would be addressed by either the SDNY or the New York State Supreme Court. Designating an Article III court and a sophisticated state court as potential forums for dispute resolution is plainly consistent with the Exchange Act.

Courts offer important substantive expertise and procedural mechanisms that would facilitate the fair and efficient resolution of claims in relation to CAT reporting. As an example, because a CAT technical issue, system failure, or data breach may impact thousands of potential parties, the ability of courts to consolidate and join claims and certify class actions would minimize costs of litigation for all potential parties (including Industry Members), which, in turn, furthers the market efficiency and fair competition objectives of the Exchange Act.

The importance of a court resolving claims regarding CAT reporting is underscored by the regulatory nature of the CAT. The Participants are implementing the requirements of Rule 613 and the CAT NMS Plan in their regulatory capacities. While cyber litigation frequently presents complex questions, the CAT's regulatory nature adds a further layer of complexity to any potential dispute. Among other issues, a tribunal would have to evaluate the relationships between the Commission, the Participants, and Industry Members and determine the applicability of any immunity claims. In connection with the Participants' limitation of liability proposal, both the Commission and the Securities Industry and Financial Markets Association (''SIFMA'') recognized that regulatory immunity may be at issue in a dispute regarding CAT reporting. Utilizing courts to resolve such disputes will ensure that bedrock principles of the self-regulatory framework are adjudicated based on decades of binding precedent (often developed through the Commission's feedback via amicus briefs) and afford the parties critical appellate rights.[8]

Notwithstanding the benefits of litigation, an arbitration provision was included in the original Reporter Agreement because the agreement disclaimed all direct and indirect damages and capped the Participants' liability to $500 per Industry Member or Participant that entered into the Reporter Agreement (''CAT Reporter''). Indeed, arbitrators routinely interpret—and enforce—liability limitations and damages exclusions, and the broad nature of those provisions would have deterred meritless claims. But considering the complex legal and factual issues likely implicated by a dispute concerning CAT reporting, in the absence of a robust limitation on liability, all parties should be able to rely on the protections available in litigation.

The Participants' proposed federal forum and alternative state forum are well equipped to handle any dispute relating to CAT reporting. The United States Court of Appeals for the Second Circuit, and the SDNY, have significant experience resolving securities matters and cyber claims. Likewise, the New York State Supreme Court in the First Judicial Department, and in particular its Commercial Division in New York County (Manhattan), is comprised of experienced judges who regularly preside over complex disputes. Both forums routinely adjudicate matters involving the Participants, Industry Members, and the Commission, and given the locations of potential parties to a CAT Data breach, New York would likely constitute a convenient forum for dispute resolution.[9]

(1) Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS to enhance regulatory oversight of the U.S. securities markets. The rule directed the Participants to create a ''Consolidated Audit Trail'' (also referred to herein as the ''CAT'') that would strengthen the ability of regulators—including the Commission and the self-regulatory organizations—to surveil the securities markets.[10] Following the adoption of Rule 613, the Participants prepared and proposed the CAT NMS Plan and then implemented—and continue to implement—the Plan's extensive requirements.

In preparation for CAT reporting, the Operating Committee of CAT LLC approved a Reporter Agreement and Reporting Agent Agreement by unanimous written consent on August 29, 2019. Those agreements contained industry standard limitation of liability provisions that disclaimed all damages and capped the liability of CAT LLC, the Participants, and FINRA CAT to any CAT Reporter at $500 per calendar year. The agreements also contained a mandatory arbitration provision with respect to any disputes in connection with CAT reporting and authorized an arbitrator to grant remedies that ''the arbitrator deems just and equitable within the scope of [the] Agreement.''[11]

On April 22, 2020, SIFMA challenged the Reporter Agreement's limitation of liability and indemnification provisions by filing an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act (the ''Administrative Proceeding''). On May 13, 2020, SIFMA and the Participants reached a settlement of the Administrative Proceeding that permitted Industry Members to report data to the CAT pursuant to a revised Reporter Agreement that did not contain a limitation of liability provision, while the Participants prepared a filing with the Commission to resolve the parties' underlying disagreement regarding the proper allocation of liability.[12]

On December 18, 2020, the Participants proposed to amend the CAT NMS Plan to authorize CAT LLC to revise the Reporter Agreement and the Reporting Agent Agreement to insert limitation of liability provisions (the ''Limitation of Liability Proposal'').[13] SIFMA and various Industry Members submitted comment letters in response to the Limitation of Liability Proposal and in response to the Commission's April 6, 2021 Order Instituting Proceedings.[14] Multiple comment

[8] In light of the complex factual and legal issues likely to be presented by any dispute concerning CAT Reporting, the Proposed Amendment also adds a jury waiver provision to the Reporter Agreement and the Reporting Agent Agreement. *See infra* at Appendices E & F.

[9] The Proposed Amendment also contains a disclaimer of warranties, whereby CAT LLC, FINRA CAT, and the Participants disclaim all warranties in relation to the Reporter Agreement (or the Reporting Agent Agreement) and the CAT System. *See infra* § 8.

[10] *See* 17 CFR 242.613 (2012).

[11] *See* Consol. Audit Trail Rep. Agreement (''Reporter Agreement'') and Consol. Audit Trail Reporting Agent Agreement (''Reporting Agent Agreement''), § 7.9, available at *https://www.catnmsplan.com/sites/default/files/2020-02/Consolidated-Audit-Trail-Reporter-Agreement%2808-29-19%20FINAL%29.pdf* and *https://www.catnmsplan.com/sites/default/files/2020-05/Consolidated-Audit-Trail-Reporting-Agent-Agreement-amended_0.pdf.*

[12] As part of the settlement of the Administrative Proceeding, SIFMA agreed to abandon its challenge to the industry standard indemnification provisions that were included in the original Reporter Agreement and Reporting Agent Agreement. *See* SIFMA Statement on Settlement on CAT Reporter Agreement, available at *https://www.sifma.org/resources/news/sifma-statement-on-settlement-on-cat-reporter-agreement/.* All CAT Reporters and CAT Reporting Agents eventually signed an agreement that contained those indemnification provisions.

[13] *See* Letter from Michael Simon, CAT NMS Plan Operating Comm. Chair to Vanessa Countryman, Sec'y, SEC (Dec. 18, 2020), available at *https://catnmsplan.com/sites/default/files/2020-12/12.18.2020-Proposed-Amendment-to-the-CAT-NMS-Plan.pdf.*

[14] *See* SEC, Joint Indus. Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove an Amend. to the Nat'l Mkt. Sys. Plan

letters—including from SIFMA—discussed the applicability of regulatory immunity to a CAT Data breach, and demonstrated an assumption and understanding that assessments of immunity claims would be conducted by courts.[15]

On October 29, 2021, the Commission issued an order disapproving the Limitation of Liability Proposal (the ''Disapproval Order'').[16] The Commission noted that the Participants may have limited liability through ''court-established'' regulatory immunity, and that the impact of the Limitation of Liability Proposal depended on assumptions about the applicability of regulatory immunity to a CAT Data breach.[17] Throughout the Disapproval Order, the Commission indicated that the applicability of regulatory immunity is appropriately decided by courts.[18]

(2) The Forum Selection Provision

The Forum Selection Provision is contained in Appendix A to this Proposed Amendment.[19] In sum, the Forum Selection Provision provides that any dispute concerning CAT reporting must be filed in the SDNY if there is any basis for federal subject matter jurisdiction.[20] The clause also provides that if federal courts lack jurisdiction over a dispute, plaintiffs must file suit in the New York State Supreme Court in New York County (Manhattan) within the First Judicial Department. The Proposed Amendment would require that the parties to any action filed in the New York State Supreme Court seek assignment to the court's Commercial Division if permitted by the Uniform Civil Rules for the Supreme and County Courts.[21]

The Forum Selection Provision also provides that the parties to any litigation agree to accept service of a complaint by U.S. registered mail and waive any objections based on venue. The Proposed Amendment would apply to any litigation commenced by any signatory to the CAT Reporter Agreement (or Reporting Agent Agreement).

(3) The Nature of Potential Claims

The Participants believe that a court is the proper forum to resolve claims regarding CAT reporting, including claims in relation to potential technical issues, system failures, and data breaches. Although the specific claims asserted likely will depend on the nature of the incident, in the aftermath of high-profile data breaches (*i.e.,* one category of potential claims), plaintiffs have brought common law claims of breach of contract and negligence as well as claims based on various federal statutes including the Stored Communications Act, the Federal Wiretap Act, and the Computer Fraud and Abuse Act.[22] In those matters, plaintiffs sought substantial monetary relief including compensatory, punitive, and statutory damages.

In any dispute regarding CAT reporting, CAT LLC will likely have strong defenses because of the CAT's robust—and SEC-approved—cybersecurity, and the Participants' regulatory role in implementing the CAT NMS Plan.[23] Additionally, such disputes are likely to present complex legal and factual issues inherent in cyber litigation generally. As discussed *infra* at Section A(4), the Participants believe that a court is well-equipped to address and mitigate any challenges of adjudicating claims resulting from CAT reporting.

(4) Litigation Would Promote the Fair, Expeditious, and Efficient Resolution of Any Claims Regarding CAT Reporting

The Proposed Amendment would lead to the fair and efficient resolution of potential disputes, ensure that issues implicating foundational principles of the self-regulatory framework are decided based on longstanding precedent, and provide the parties with important appellate rights. Litigating claims in an Article III court, or sophisticated state court, is plainly consistent with the Exchange Act.[24]

Governing the Consol. Audit Trail, Release No. 34–391487; File No. 4–698 (Apr. 6, 2021), available at *https://www.sec.gov/rules/sro/nms/2021/34-91487.pdf,* 86 FR 19054 (Apr. 12, 2021), available at *https://www.govinfo.gov/content/pkg/FR-2021-04-12/pdf/2021-07390.pdf*; 17 CFR 242.608(b)(2)(i).

[15] *See e.g.,* Letter from Ellen Greene, SIFMA to Vanessa Countryman, Sec'y, SEC, at 7 (May 3, 2021) (the ''SIFMA Letter''), available at *https://www.sec.gov/comments/4-698/4698-8751243-237404.pdf* (discussing an indication that ''courts are likely to view any regulatory activity the SROs conduct through CAT LLC as being subject to this judicial immunity''); Letter from Stephen John Berger, Citadel Sec. to Vanessa Countryman, Sec'y, SEC, at 5 (Feb. 23, 2021) (the ''Citadel Letter''), available at *https://www.sec.gov/comments/4-698/4698-8411798-229501.pdf* (''[C]ourts must be 'careful not to extend the scope of the protection further than its purposes require.' '') (citations omitted); Letter from Kelvin To, Data Boiler Techs., LLC to Vanessa Countryman, Sec'y, SEC, at 4 (May 3, 2021) (the ''Data Boiler Letter''), available at *https://www.sec.gov/comments/4-698/4698-8749987-237362.pdf* (''How courts apply a 'functional test' to determine whether an SRO is entitled to immunity from burdens of litigation or civil damages suits may be a controversy here.'').

[16] SEC, Joint Industry Plan; Order Disapproving an Amend. to the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail, Release No. 34–93484; File No. 4–698 (Oct. 29, 2021), available at *https://www.sec.gov/rules/sro/nms/2021/34-93484.pdf,* 86 FR 60,933 (Nov. 4, 2021), available at *https://www.govinfo.gov/content/pkg/FR-2021-11-04/pdf/2021-24015.pdf.*

[17] *See* Disapproval Order at 29 (''Even in the absence of the proposed Limitation of Liability Provisions, the Participants may have limited liability to Industry Members through court-established regulatory immunity.'') (citation omitted); *see also id.* at 42 (''The Commission believes that uncertainty regarding liability in case of a CAT Data breach thus serves as an incentive for the Participants to invest in data security to the extent that Participants believe a court might not uphold their regulatory immunity or it would be judged not to apply in a given case that was before the courts.''); *id.* at 35 (''Participants can assert regulatory immunity to the extent that the doctrine applies if there is a security breach that exposes CAT Data and Industry Members seek damages from the responsible Participants.'').

[18] *See, e.g., supra* n.17.

[19] In advance of filing this Proposed Amendment, the Participants attempted to confer with SIFMA to determine whether Industry Members would agree to revise the Reporter Agreement as described herein. SIFMA declined to engage in a discussion with the Participants.

[20] Section 11.5 of the CAT NMS Plan authorizes Industry Members to ''seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum'' with respect to any dispute regarding CAT fees. The Forum Selection Provision would not impact the ability of Industry Members to petition the Commission directly with respect to such disputes. CAT NMS Plan, *supra* n.1, § 11.5.

[21] The Commercial Division has two jurisdictional requirements: (1) a monetary threshold, which is $500,000 in Manhattan, and, provided that the monetary threshold is met (or equitable or declaratory relief is sought), (2) the principal claim must fall within an enumerated list of types of claims, which include, among others, claims for breach of contract. 22 N.Y.C.R.R. §§ 202.70(a), 202.70(b)(1)–(12). In addition, any party seeking assignment of a case to the Commercial Division must file a Commercial Division Request for Judicial Intervention Addendum certifying that the case meets those two jurisdictional requirements. 22 N.Y.C.R.R. § 202.70(d)(1).

[22] *See, e.g., In re Google Assistant Privacy Litig.,* No. 19–cv–04286–BLF, 2021 WL 2711747, at *2 (N.D. Cal. July 1, 2021); *Cal-Cleve, Ltd.* v. *Wrag-Time Air Freight, Inc.,* No. 04–cv–10543 SJO (JTLx), 2005 WL 8157876, at *1 (C.D. Cal. June 1, 2005).

[23] FINRA CAT has implemented robust controls to protect the security and confidentiality of CAT Data and the Commission has repeatedly concluded that the CAT NMS Plan incorporates ''robust security requirements'' that ''provide appropriate, adequate protection for the CAT Data.'' *See* Order Approving CAT NMS Plan, *supra* n.1, at 715; *see also* SEC, Proposed Amends. to the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail to Enhance Data Sec., Release No. 34–89632; File No. S7–10–20, at 10 (Aug. 21, 2020) (the ''Data Security Proposal''), available at *https://www.sec.gov/rules/proposed/2020/34-89632.pdf,* 85 FR 65990 at 65991 (Oct. 16, 2020), available at *https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-18801.pdf* (''CAT Data reported to and retained in the Central Repository is thus subject to what the Commission believes are stringent security policies, procedures, standards, and controls.'').

[24] The Participants recognize that certain individuals who serve as arbitrators may have experience with cybersecurity and securities matters. However, even if the parties to a CAT Data breach were able to ensure that such arbitrators presided over a potential dispute, litigation remains more suitable to resolve claims regarding CAT reporting for the reasons discussed in this submission, including (among other reasons) courts' mechanisms to consolidate claims, the presence of

Continued

a. Consolidation, Joinder of Claims, and Class Actions

Because certain potential claims arising out of CAT reporting—including technical issues, system failures, and data breaches—are likely to impact multiple parties, one important consideration is the extent to which a particular dispute resolution mechanism allows for consolidation of claims. Indeed, consolidating such claims would reduce costs of dispute resolution, enable CAT LLC to focus on its regulatory mandate, and decrease the risk of disparate outcomes in similar cases, all of which promote the efficiency and fair competition objectives of the Exchange Act.

In court, litigants can rely on the applicability of the rules of consolidation and joinder to increase the likelihood that all cases arising out of one incident are heard together. Both federal and New York State rules of civil procedure provide mechanisms to consolidate cases and join parties to actions.[25] Relatedly, both federal and state courts permit the use of class actions for certain disputes.[26] These rules promote consistency of outcomes and the efficient resolution of claims.

By contrast, under the AAA Commercial Arbitration Rules (the ''AAA Rules''), which govern arbitration under the current Reporter Agreement and Reporting Agent Agreement, consolidation is a ''suggest[ion] . . . that the parties and the arbitrator should address at the preliminary hearing,'' and the ultimate decision regarding whether consolidation is appropriate is ''subject to the discretion of the arbitrator.'' [27] The AAA Rules are also silent on joinder. While parties to an arbitration agreement may agree that signatories will be required to join claims,[28] parties frequently face complications in joining non-signatories to an arbitration. This is particularly significant in the context of a potential claim arising out of CAT reporting because certain types of incidents may impact both Industry Members and other market participants (*e.g.,* retail investors).

For those reasons, if the arbitration provision remains in the Reporter Agreement and Reporting Agent Agreement, actions involving the same common questions of law or fact or arising out of the same ''transaction or occurrence'' may be brought piecemeal, with signatories to the agreements arbitrating their claims or defenses and non-signatories litigating those claims or defenses in court. This can lead to illogical or unworkable outcomes; [29] indeed, cases arising out of the same facts or involving the same legal issues or even the same parties may result in entirely different outcomes, creating inconsistent rules, rendering inconsistent damages awards, or both.

b. Reliance on Precedent and the Expertise of Courts

A dispute regarding CAT reporting is likely to present complex legal and factual issues inherent in cyber litigation generally as well as in relation to the Participants' regulatory roles in overseeing the CAT. Allowing the parties to litigate in court would ensure that the forum charged with resolving disputes is bound by the substantial body of precedent that has been developed to address these issues.

Relatedly, the doctrine of regulatory immunity may play an important role in any dispute concerning CAT reporting. In connection with the Limitation of Liability Proposal, multiple comment letters discussed the applicability of regulatory immunity to a CAT Data breach and demonstrated an assumption and understanding that such a determination was the province of courts.[30] The Commission, likewise, recognized the importance of regulatory immunity claims and its Disapproval Order also indicated an expectation that such claims would be decided by courts.[31] Indeed, courts have developed a robust body of case law on the immunity doctrine, which provides parameters to courts as they analyze the applicability of regulatory immunity to the specific facts presented by a given case.

The ability to rely on binding precedent is even more critical in the event of a claim arising out of CAT reporting. As discussed *supra* at Section 3, certain incidents may lead to claims in which impacted parties seek substantial damages from CAT LLC. In light of the potential amount in controversy, coupled with the likely legal and factual issues presented by a dispute—including the applicability of immunity claims—all parties should be able to rely on the certainty of knowing that their conduct will be evaluated by developed legal standards. In addition to affording all parties the opportunity to rely on precedent, litigating disputes in court will also promote the development of precedent to guide the conduct of the Participants and Industry Members.

c. Appellate Review

Adjudicating claims in relation to CAT reporting in court provides all parties with critical appellate rights. While important for any high stakes dispute, appellate rights are particularly important in the event of a CAT system failure, technical issue, or data breach, considering the complicated legal and factual issues, the nature of the parties, and the potentially large amount in controversy. Regulatory immunity claims, for example, are often the subject of appellate review.[32]

Direct appellate review is largely absent in arbitration.[33] Moreover, even if the parties to the Reporter Agreement or Reporting Agent Agreement were able to avail themselves of appellate rights, an appellate arbitration tribunal would be similarly unbound by precedent as the lower arbitration forum that rendered a potentially erroneous award.[34] With respect to judicial review of an arbitration award, the Federal Arbitration Act (the ''FAA'') provides limited grounds for federal courts to vacate, modify, or correct final arbitration decisions.[35] In the absence of

meaningful appellate rights, the role of legal precedent, the nature of the parties to a potential dispute, and the relevance of regulatory immunity to resolving claims.

[25] *See* Fed. R. Civ. P. 19, 20, 42(a)(2); N.Y. C.P.L.R. §§ 602, 1001, 1002.

[26] *See* Fed. R. Civ. P. 23; 28 U.S.C. 1332(d)(2); N.Y. C.P.L.R. § 901(a).

[27] *See* AAA Rules P–2(a)(vi)(c).

[28] *See, e.g.,* 9 U.S.C. 2 (''A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.''); *see also* AAA Rules R–1(a) (providing that the AAA Rules are deemed a part of parties' agreement to arbitrate where the parties provide for AAA commercial arbitration).

[29] *See* Rick Fleming, Investor Advocate, SEC, Mandatory Arbitration: An Illusory Remedy for Public Company Shareholders (Feb. 24, 2018), *https://www.sec.gov/news/speech/fleming-sec-speaks-mandatory-arbitration* (''[I]t seems terribly inefficient to require multiple plaintiffs to prove up the same claims in separate proceedings.'').

[30] *See, e.g., supra* n.15.

[31] Disapproval Order, *supra* n.16, 17.

[32] *See, e.g., D'Alessio* v. *N.Y. Stock Exchange, Inc.,* 258 F.3d 93 (2d Cir. 2001); *In re NYSE Specialists Sec. Litig.,* 503 F.3d 89 (2d Cir. 2007).

[33] AAA Rules only authorize appellate review of arbitration awards if the parties consent to appellate rights. *See* AAA Rules A–1.

[34] As the Supreme Court has explained, ''[t]he arbitrator's construction holds, however good, bad, or ugly.'' *Oxford Health Plans LLC* v. *Sutter,* 569 U.S. 564, 573 (2013).

[35] *See* 9 U.S.C. 9 (providing that if the parties have contractually agreed that a specific federal court will enter judgment upon an arbitration award, then at any time within one year after the award is made, any party may apply to that court for an order confirming the award; if no court is specified, then the application may be made to the U.S. district court for the district within which the

unusual circumstances, however, meaningful appellate review is generally unavailable: none of the grounds provided by the FAA would authorize a court to vacate an arbitration award that was premised on an error of law.[36]

d. Rules Governing Discovery and Evidence

Considering the magnitude of data transmitted to the CAT, a dispute is likely to involve a substantial volume of documents and information. Additionally, many documents that might be the subject of discovery requests are likely to be either commercially sensitive for Industry Members or involve nonpublic, sensitive information regarding the CAT's security.

Parties to litigation are afforded the benefits of rules governing the discovery process and admissibility of evidence. These rules promote predictability of litigation, efficiency of resolutions, and fairness of results,[37] and provide mechanisms for facilitating discovery as well as the admission of evidence.[38] For example, litigants in court must comply with clear discovery rules, which govern the scope of discovery and the timing and content of disclosures, and facilitate communication among the parties and the court regarding these matters.[39] Litigants in court also have the benefit of a uniform set of rules governing the admissibility of evidence.[40] These protections do not exist under the AAA Rules,[41] which provide a more limited set of procedures pertaining to discovery and evidence.[42] Given the breadth and depth of the discovery and evidence rules in federal and state court, and the fact that courts are bound by precedent and subject to appellate review, *see supra* § A(4)(b)–(c), courts are better suited to handle disputes regarding CAT reporting.

(5) Designating the SDNY and New York State Courts in a Forum Selection Provision is Consistent With the Exchange Act

The Proposed Amendment's Forum Selection Provision designates the SDNY, or, in the absence of federal subject matter jurisdiction, a New York State Supreme Court in New York County within the First Judicial Department as the venue for any dispute concerning CAT reporting. Both forums would provide the parties with a sophisticated tribunal that has experience adjudicating matters involving the federal securities laws, market structure, and cybersecurity.

As an initial mater, based on the potential parties to any lawsuit arising out of CAT reporting, New York is likely to be a convenient venue. As the reputed financial capital of the world, New York is home to the two largest securities exchanges and several other Participants. Additionally, many of the most prominent Industry Members by trading volume are located in New York.[43]

The existing Reporter Agreement and Reporting Agent Agreement both provide that any claim must be commenced in New York (*i.e.,* in the current arbitration provision) and that the Reporter Agreement and Reporting Agent Agreement are governed by New York law.[44] Relatedly, all dates and times referenced in the agreements are set to New York time.[45]

In addition to being a convenient venue for potential parties, the Participants' proposed forum—and backup forum—have the requisite subject matter expertise to resolve claims in relation to CAT reporting fairly and efficiently. The Second Circuit has extensive experience with securities and financial regulation matters.[46] Moreover, applying the precedent set by the Second Circuit, the SDNY routinely handles complicated securities matters with broad implications for the national financial markets.

The Second Circuit—and the SDNY in particular—also has significant experience determining the rights and remedies of parties following data breaches, including in relation to critical issues such as standing and damages,[47] and balancing the competing interests involved in adjudicating sensitive and costly cybersecurity incidents.[48] In light of its extensive

award was made); 9 U.S.C. 10 (providing that the U.S. district court where the arbitration award was made may vacate the award upon an application of any party to the arbitration, where the award was ''procured by corruption, fraud, or undue means,'' where there ''was evident partiality or corruption in the arbitrators,'' where the arbitrators ''were guilty of misconduct,'' or where the arbitrators ''exceeded their powers'' or ''so imperfectly executed them that a mutual, final, and definite award'' was not made); 9 U.S.C. 11 (providing the following grounds for which a U.S. district court may upon the application of any party to an arbitration modify or correct an arbitration award: ''an evident material miscalculation'' or mistake in the award; an award upon a matter ''not submitted'' to the arbitrators; or ''where the award is imperfect in matter of form not affecting the merits of the controversy'').

[36] *See* 9 U.S.C. 11.

[37] *See, e.g.,* Fed. R. Civ. P. 1 (noting that the purpose of the rules is to ''secure the just, speedy, and inexpensive determination of every action and proceeding'').

[38] *See generally* Fed. R. Civ. P. 26–28, 30–31, 33–34, 36; Fed. R. Evid. 101–02; N.Y. C.P.L.R. §§ 3101–02, 3122; 22 N.Y.C.R.R. §§ 202.11–12; Guide to N.Y. Evid. rule 1.03. Courts also have subpoena power over witnesses. *See* Fed. R. Civ. P. 30(a)(1), 45(a)(1)(B), 45(c)(1); N.Y. C.P.L.R. §§ 2301, 3106(b); 22 N.Y.C.R.R. § 202.20–d; *see also* 28 U.S.C. 1783; Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Convention); Uniform Interstate Depositions and Discovery Act (the ''UIDDA'') (providing mechanism for New York State courts to serve out-of-state subpoenas; in the absence of the UIDDA, the provisions for service applicable in the out-of-state jurisdiction apply).

[39] *See, e.g.,* Fed. R. Civ. P. 26; N.Y. C.P.L.R. § 3101; 22 N.Y.C.R.R. §§ 202.11–12.

[40] *See* Fed. R. Evid. 101, 102. New York State does not have a statutory code of evidence; instead, its rules of evidence reside in judicial precedent, the State constitution, and State statutes. The New York Unified Court System has compiled a guide setting forth current practice in New York State courts regarding the application of the rules of evidence. *See generally* Guide to N.Y. Evid. Rule 1.03, Note. New York evidence law is generally in accord with the Federal Rules of Evidence, including rules on relevance, prejudice, privilege, and hearsay. *See, e.g., id.* rules 4.01, 4.07, 5.01–09, and 8.00–01.

[41] AAA Rules P–1(b) (instructing parties to carefully ''avoid importing procedures from court systems'').

[42] *See, e.g., id.* (disclaiming procedures from court systems), R–22 (providing for pre-hearing exchange and production of information), L–3(f) (noting that depositions are available only in ''exceptional'' circumstances), R–34 (governing the admissibility of evidence and noting conformity to the legal rules of evidence is not necessary); *see also* 9 U.S.C. 7 (allowing arbitrator to subpoena witnesses to testify, but only in hearings, as opposed to depositions); *CVS Health Corp.* v. *Vividus, LLC,* 878 F.3d 703, 706, 708 (9th Cir. 2017) (holding that ''section 7 of the FAA does not grant arbitrators the power to order third parties to produce documents prior to an arbitration hearing''); *Life Receivables Tr.* v. *Syndicate 102 at Lloyd's of London,* 549 F.3d 210, 217 (2d Cir. 2008); *Hay Grp., Inc.* v. *E.B.S. Acquisition Corp.,* 360 F.3d 404, 407 (3d Cir. 2004) (Alito, J.).

[43] Those Industry Members include, for example, Citigroup Global Markets, Inc., Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC, J.P. Morgan Securities, LLC, Deutsche Bank Securities, Inc., UBS Securities LLC, and Credit Suisse Securities USA, LLC.

[44] Reporter Agreement § 7.11; Reporting Agent Agreement § 7.11.

[45] Reporter Agreement § 7.8; Reporting Agent Agreement § 7.8.

[46] The Supreme Court has referred to the Second Circuit as the ''Mother Court'' regarding securities matters. *See, e.g., Morrison* v. *Nat'l Austl. Bank,* 561 U.S. 247, 275–76 (2010) (Stevens, J., concurring in judgment) (quoting *Blue Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723, 737 (1975)).

[47] *See, e.g., McMorris* v. *Carlos Lopez & Assocs., LLC,* 995 F.3d 295, 300–03 (2d Cir. 2021) (standing); *In re GE/CBPS Data Breach Litig.,* No. 20–cv–2903 (KPF), 2021 WL 3406374, at *5–7 (S.D.N.Y. Aug. 4, 2021) (standing); *Sackin* v. *TransPerfect Glob., Inc.,* 278 F. Supp. 3d 739, 745 (S.D.N.Y. 2017) (damages); *Hammond* v. *Bank of New York Mellon Corp.,* No. 08–cv–6060 (RMB) (RLE), 2010 WL 2643307, at *4 (S.D.N.Y. June 25, 2010) (damages); *see also Smahaj* v. *Retrieval-Masters Creditors Bureau, Inc.,* 69 Misc.3d 597, 599–600, 604 (Sup. Ct. Westchester Cnty. 2020) (damages).

[48] *See, e.g., McMorris,* 995 F.3d at 302 (weighing relative sensitivity of certain types of data); *Wallace* v. *Health Quest Sys., Inc.,* No. 20–cv–545 (VB), 2021 WL 1109727, at *1 n.1 (S.D.N.Y. Mar. 23, 2021) (addressing claims for negligence, breach of implied contract, breach of contract, unjust enrichment, breach of confidence, bailment, and violations of New York's General Business Law);

Continued

experience with securities, financial regulation, market structure, and cyber matters, it is beyond reasonable dispute that the Second Circuit and the SDNY have the appropriate expertise to resolve a dispute regarding CAT reporting.

As the Commission noted in its Disapproval Order, in the absence of a limitation on liability, the Participants can assert regulatory immunity in response to a claim for damages. The Second Circuit has authored several seminal opinions regarding the scope of regulatory immunity,[49] and courts in other jurisdictions often cite to and rely on the Second Circuit's analyses to apply the regulatory immunity doctrine to cases pending before them.[50]

New York State courts—particularly those within the Commercial Division of the First Judicial Department—are likewise well suited to address the complex issues that might arise during litigation regarding a CAT Data breach. The court's judges focus primarily on complex cases and have developed sophisticated procedural rules designed to foster the efficient and fair resolution of disputes.[51] Relying in part on the Second Circuit's developed body of case law, the New York state courts within the First Judicial Department are one of only a few state courts that have addressed the scope of regulatory immunity.[52]

(6) Governing Law Provision

The Proposed Amendment modifies the governing law provision contained in the existing Reporter Agreement and Reporting Agent Agreement to provide that the agreements, and any matters between CAT LLC and either a CAT Reporter or a CAT Reporting Agent, will be governed by federal law and the laws of the State of New York. The existing governing law provision refers only to New York state law and, because CAT LLC was created pursuant to federal law and is subject to a federal regulatory regime, claims by or against CAT LLC could involve issues of federal law. Therefore, the Proposed Amendment modifies the existing governing law provision to clarify that any disputes arising out of or related to the agreements will be governed by both federal law and by New York state law.

(7) Waiver of Jury Trial Provision

In conjunction with the Forum Selection Provision, the Proposed Amendment provides that the parties agree to waive the right to a jury trial of any claim arising out of the Reporter Agreement (or the Reporting Agent Agreement) or CAT reporting. As discussed above, a CAT Data breach is likely to present several complicated factual and legal issues. The Participants believe that the issues likely to be in dispute would be most effectively and efficiently resolved by judges, who have the requisite experience and expertise. In addition, utilizing a bench trial should reduce costs involved with litigation.

(8) Disclaimer of Warranties Clause

The Proposed Amendment adds a disclaimer of warranties, which provides that the Participants, CAT LLC, and FINRA CAT do not make any representations or warranties with respect to the CAT System or the Reporter Agreement (or the Reporting Agent Agreement). Such disclaimers are common in agreements, and CAT LLC is entitled to control the contractual representations and warranties that it makes.

The proposed disclaimer of warranties clause was included (in sum and substance) in the original Reporter Agreement but was removed in connection with the settlement of the Administrative Proceeding along with the Limitation of Liability Provisions. Notably, although the Participants included a disclaimer of warranties clause in the Limitation of Liability Proposal, no commenter (including SIFMA) objected to the inclusion of that provision in the Reporter Agreement. Notwithstanding the lack of any objection, when the Commission issued the Disapproval Order—which focused in substance on the Limitation of Liability Provision—the Commission incidentally also disapproved the proposed disclaimer of warranties clause without commenting on whether the clause was consistent with the Exchange Act.

Although substantively unrelated to the Forum Selection Provision, the Participants are including the disclaimer of warranties clause in this Proposed Amendment to enable the Commission to approve this proposed modification to the Reporter Agreement that did not generate any opposition among Industry Members or any commenter. As discussed above, the Participants are implementing the requirements of Rule 613 and the CAT NMS Plan for regulatory purposes at the behest of the Commission. Under those circumstances, the Participants should not be held liable for damages based on warranties or representations that they did not explicitly make.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants propose to implement the Proposed Amendment by making the revised agreements effective upon Commission approval of this Proposed Amendment, without requiring CAT Reporters and CAT Reporting Agents to re-sign the agreements.

D. Development and Implementation Phases

The Participants propose the revised agreements be effective upon Commission approval of this Proposed Amendment, without requiring CAT Reporters and CAT Reporting Agents to re-sign the agreements.

E. Analysis of Impact on Competition

The Participants do not believe the Proposed Amendment will have any impact on competition. The Proposed Amendment would mandate that all CAT Reporters and CAT Reporting Agents are bound by revised agreements that contain the amended provisions. Moreover, the Forum Selection Provision would apply equally to all Industry Members, the Participants, and CAT LLC, and would not impact the relative competitive positions among

see also Pena v. *British Airways, PLC (UK),* No. 18–cv–6278 (LDH) (RML), 2020 WL 38989055, at *2 n.2, *3–4, *6 (E.D.N.Y. Mar. 30, 2020) (granting motion to dismiss for lack of standing, preemption, and failure to state a claim); *see also Keach* v. *BST & Co. CPAs, LLP,* 71 Misc.3d 1204(A), at *7 (Sup. Ct. Albany Cnty. 2021) (citations omitted).

[49] *See Standard Inv. Chartered, Inc.* v. *Nat'l Ass'n of Sec. Dealers, Inc.,* 637 F.3d 112, 116 (2d Cir. 2011) (noting Second Circuit decisions on regulatory immunity in the context of "(1) disciplinary proceedings against exchange members, [*Barbara* v. *NYSE,* 99 F.3d 49, 59 (2d Cir. 1996)]; (2) the enforcement of security rules and regulations and general regulatory oversight over exchange members, [*D'Alessio,* 258 F.3d at 106]; (3) the interpretation of the securities laws and regulations as applied to the exchange or its members, *id.;* (4) the referral of exchange members to the SEC and other government agencies for civil enforcement or criminal prosecution under the securities laws, *id.;* and (5) the public announcement of regulatory decisions, [*DL Cap. Grp., LLC* v. *Nasdaq Stock Mkt., Inc.,* 409 F.3d 93, 98 (2d Cir. 2005)].").

[50] *See, e.g., In re Series 7 Broker Qualification Exam Scoring Litig.,* 548 F.3d 110, 113–15 (D.C. Cir. 2008) (citing *Barbara,* 99 F.3d 49; *Desiderio* v. *NASD,* 191 F.3d 198 (2d Cir. 1999); *DL Cap. Grp.,* 409 F.3d 93; *Feins* v. *Am. Stock Exch., Inc.,* 81 F.3d 1215 (2d Cir. 1996)).

[51] *See generally* 22 N.Y.C.R.R. § 202.70 (Rules of the Commercial Division of the Supreme Court). The Commercial Division "is an efficient, sophisticated, up-to-date court dealing with challenging commercial cases" and "its primary goal [is] the cost-effective, predictable and fair adjudication of complex commercial cases." 22 N.Y.C.R.R. § 202.70(g) (Preamble to the Rules of practice for the Commercial Division).

[52] *See Wey* v. *Nasdaq, Inc.,* 188 A.D.3d 587 (1st Dep't 2020).

different Industry Members. Additionally, as discussed above, adjudication of disputes relating to CAT reporting in courts promotes consistency of outcomes, which thereby promotes fair competition. Conversely, arbitration could lead to disparate and inconsistent outcomes of similar disputes, which would unfairly advantage certain parties over others.

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 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 or has otherwise become effective under Rule 608. The Participants, by a vote of the Operating Committee taken on May 17, 2022, have authorized the filing of this Proposed Amendment with the SEC in accordance with the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment and Any Fees or Charges in Connection Thereto

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

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 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Assistant Secretary.

APPENDIX A

LIMITED LIABILITY COMPANY AGREEMENT OF CONSOLIDATED AUDIT TRAIL, LLC

* * * * *

ARTICLE XII

[proposed additions]

* * * * *

Section 12.15. *Forum Selection; Governing Law; Waiver of Jury Trial; Disclaimer of Warranties.* Each CAT Reporter shall be bound by an amended Consolidated Audit Trail Reporter Agreement containing, in substance, the forum selection provision, governing law provision, jury waiver provision, and disclaimer of warranties clause in Appendix E to this Agreement. Each Person engaged by a CAT Reporter to report CAT Data to the Central Repository on behalf of such CAT Reporter shall be bound by an amended Consolidated Audit Trail Reporting Agent Agreement containing, in substance, the forum selection provision, governing law provision, jury waiver provision, and disclaimer of warranties clause in Appendix F to this Agreement. The Operating Committee shall have authority in its sole discretion to make non-substantive amendments to the forum selection provision, governing law provision, jury waiver provision, and disclaimer of warranties clause in the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement.

* * * * *

APPENDIX E

[proposed additions]

* * * * *

Forum Selection Provision in the CAT Reporter Agreement

7.9. *Forum Selection.* EXCEPT AS OTHERWISE PROHIBITED BY FEDERAL LAW OR OTHERWISE PROVIDED BY SECTION 11.5 OF THE CAT NMS PLAN, FOR ANY DISPUTE, CONTROVERSY, OR CLAIM IN CONNECTION WITH, RELATING TO, OR ASSOCIATED IN ANY WAY WITH THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM, THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE NEW YORK STATE SUPREME COURT FOR NEW YORK COUNTY IN THE BOROUGH OF MANHATTAN, INCLUDING THE COMMERCIAL DIVISION. Each Party hereby agrees to commence any such action, suit, or other proceeding in (i) the United States District Court for the Southern District of New York, or (ii) if such action, suit, or other proceeding cannot be brought in such court for jurisdictional reasons, to commence such suit, action, or other proceeding in the New York State Supreme Court for New York County, borough of Manhattan, and seek assignment to the New York County Commercial Division whenever the jurisdictional requirements for Commercial Division assignment are met. Service of any process, summons, notice, or document by U.S. registered mail to such Party's respective address shall be effective service of process for any action, suit, or other proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Agreement. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or other proceeding connected to, related to, or associated in any way with this Agreement, CAT Reporting, or the CAT System in the courts identified in items (i)–(ii) above, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit, or other proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this paragraph shall apply to any action, suit, or other proceeding commenced by any Party against any other Party to this Agreement,

[53] 17 CFR 200.30–3(a)(85).

including those in which one or more Participants or the Plan Processor (or any Representatives of one or more Participants or the Plan Processor) are named as parties, regardless of whether CATLLC is also named as a party.

Governing Law Clause in the CAT Reporter Agreement

7.11. *Governing Law.* THIS AGREEMENT, AND ALL MATTERS BETWEEN CATLLC AND CAT REPORTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS, RULES OR PROVISIONS THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF NEW YORK.

Jury Waiver Provision in the CAT Reporter Agreement

7.13. *Waiver of Jury Trial.* EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION FOR ANY DISPUTE, CONTROVERSY, OR CLAIM IN CONNECTION WITH, RELATING TO, OR ASSOCIATED IN ANY WAY WITH THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL–ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS.

Disclaimer of Warranties Clause in the CAT Reporter Agreement

5.5. *Disclaimer.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CATLLC, THE PLAN PROCESSOR, AND THE PARTICIPANTS DISCLAIM ANY, AND MAKE NO, REPRESENTATIONS OR WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, REGARDING THE CAT SYSTEM OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT. THIS DISCLAIMER INCLUDES, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF OR RELATING TO: MERCHANTABILITY; QUALITY; FITNESS FOR A PARTICULAR PURPOSE: COMPLIANCE WITH APPLICABLE LAWS; NON–INFRINGEMENT; TITLE; AND SEQUENCING, TIMELINESS, ACCURACY OR COMPLETENESS OF INFORMATION.

* * * * *

APPENDIX F

[proposed additions]

* * * * *

Forum Selection Provision in the CAT Reporting Agent Agreement

7.9. *Forum Selection.* EXCEPT AS OTHERWISE PROHIBITED BY FEDERAL LAW OR OTHERWISE PROVIDED BY SECTION 11.5 OF THE CAT NMS PLAN, FOR ANY DISPUTE, CONTROVERSY, OR CLAIM IN CONNECTION WITH, RELATING TO, OR ASSOCIATED IN ANY WAY WITH THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM, THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE NEW YORK STATE SUPREME COURT FOR NEW YORK COUNTY IN THE BOROUGH OF MANHATTAN, INCLUDING THE COMMERCIAL DIVISION. Each Party hereby agrees to commence any such action, suit, or other proceeding in (i) the United States District Court for the Southern District of New York, or (ii) if such action, suit, or other proceeding cannot be brought in such court for jurisdictional reasons, to commence such suit, action, or other proceeding in the New York State Supreme Court for New York County, borough of Manhattan, and seek assignment to the New York County Commercial Division whenever the jurisdictional requirements for Commercial Division assignment are met. Service of any process, summons, notice, or document by U.S. registered mail to such Party's respective address shall be effective service of process for any action, suit, or other proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Agreement. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or other proceeding connected to, related to, or associated in any way with this Agreement, CAT Reporting, or the CAT System in the courts identified in items (i)-(ii) above, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit, or other proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this paragraph shall apply to any action, suit, or other proceeding commenced by any Party against any other Party to this Agreement, including those in which one or more Participants or the Plan Processor (or any Representatives of one or more Participants or the Plan Processor) are named as parties, regardless of whether CATLLC is also named as a party.

Governing Law Clause in the CAT Reporting Agent Agreement

7.11. *Governing Law.* THIS AGREEMENT, AND ALL MATTERS BETWEEN CATLLC AND CAT REPORTING AGENT ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS, RULES OR PROVISIONS THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF NEW YORK.

Jury Waiver Provision in the CAT Reporting Agent Agreement

7.13. *Waiver of Jury Trial.* EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION FOR ANY DISPUTE, CONTROVERSY, OR CLAIM IN CONNECTION WITH, RELATING TO, OR ASSOCIATED IN ANY WAY WITH THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL–ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, CAT REPORTING, OR THE CAT SYSTEM, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS.

Disclaimer of Warranties Clause in the CAT Reporting Agent Agreement

5.5. *Disclaimer.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CATLLC, THE PLAN PROCESSOR, AND THE PARTICIPANTS DISCLAIM ANY, AND MAKE NO, REPRESENTATIONS OR WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, REGARDING THE CAT SYSTEM OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT. THIS DISCLAIMER INCLUDES, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF OR RELATING TO: MERCHANTABILITY; QUALITY; FITNESS FOR A PARTICULAR PURPOSE: COMPLIANCE WITH APPLICABLE LAWS; NON–INFRINGEMENT; TITLE; AND SEQUENCING, TIMELINESS, ACCURACY OR COMPLETENESS OF INFORMATION.

* * * * *

[FR Doc. 2022–12398 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34609; File No. 812–15314]

Voya Senior Income Fund, et al.

June 3, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 6(c) and 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from rule 23c–3 under the Act.

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c) and 23(c)(3) of the Act for an exemption from certain provisions of rule 23c–3 to permit certain registered closed-end investment companies to make repurchase offers on a monthly basis.

APPLICANTS: Voya Senior Income Fund (the ''Fund''), Voya Investments, LLC (''Voya Investments''), Voya Investment Management Co. LLC (''Voya IM'' and together with Voya Investments, the ''Adviser''), and Voya Investments Distributor, LLC (the ''Distributor).

FILING DATES: The application was filed on March 31, 2022, and amended on May 25, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Huey P. Falgout, Jr., Voya Investments, LLC, 7337 E Doubletree Ranch Road, Suite 100, Scottsdale, AZ 85258, Elizabeth J. Reza Esq., Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, Massachusetts 02199.

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Attorney-Adviser, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated May 25, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12397 Filed 6–8–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11758]

Review of the Designation as Foreign Terrorist Organizations of al-Qa'ida in the Arabian Peninsula (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the bases for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 17, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–12356 Filed 6–8–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11759]

Advisory Committee on International Law

ACTION: Notice of open meeting.

Notice of Meeting of Advisory Committee on International Law

A meeting of the Department of State's Advisory Committee on International Law will take place virtually on Friday, June 24, 2022. Acting Legal Adviser Richard Visek will chair the meeting, which will be open to the public. The meeting will include discussions on international law topics related to Russia's war against Ukraine.

Members of the public who wish to attend should contact the Office of the Legal Adviser by June 20 at *welcherar@state.gov* or 202–647–1646 and provide their name, professional affiliation, address, and phone number. A link to the virtual meeting platform will be provided at that time. Attendees who require reasonable accommodation should make their requests by June 20. Requests received after that date will be considered but might not be possible to accommodate.

Alison Welcher,

Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 2022–12407 Filed 6–8–22; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Change 1.2 Acres of Airport Land in the Existing Business Park From Aeronautical to Non-Aeronautical Use at Martha's Vineyard Airport, West Tisbury, MA

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

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the County of Dukes to change 1.2 acres of land from Aeronautical Use to Non-Aeronautical Use in the existing Airport Business Park at Martha's Vineyard Airport, West Tisbury, MA. The two parcels are being used for non-aeronautical development in the Airport Business Park. The Airport Business Park was established over twenty years ago and supports the revenue stream for the airport. The land lease proceeds will be deposited in the airport's operation and maintenance account.

DATES: Comments must be received on or before July 6, 2022.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* and follow

the instructions on providing comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W 12–140, 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.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

Authority: 49 U.S.C 47107(h)(2).

Issued in Burlington, Massachusetts on June 3, 2022.

Julie Seltsam-Wilps,

Deputy Director, ANE–600.

[FR Doc. 2022–12354 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0099]

Hours of Service of Drivers: Application for Exemption; Leland Schmitt, Jr.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Leland Schmitt, Jr. requests an exemption from five provisions of the federal hours of service (HOS) regulations. The applicant requests the exemption for himself for a 5-year period and believes that his safe driving record and experience demonstrate an equivalent level of safety. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before July 11, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number (FDMS) FMCSA–2022–0099 by any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.

• *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA–2022–0099). Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722 or *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0099), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2022–0099'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Leland Schmitt, Jr. requests a five-year exemption from 49 CFR 395.3(a)(1) (the 10 consecutive hour off duty time requirement), section 395.3(a)(2) (the 14 hour ''driving window''), section 395.3(a)(3)(ii) (the 30-minute break requirement), and sections 395.3(b)(1) and (2) (respectively, the 60 hours-in-7-days and the 70 hours-in 8-days limits). The applicant is an owner-operator currently leased to D & E Transport in Clearwater, Minnesota, who has been operating commercial motor vehicles (CMVs) for 30 years, and the requested exemption is solely for the applicant. The applicant states that the mandatory 10 hour off-duty break goes against his natural sleep patterns, as his normal nighttime sleep while in the CMV is between 5 to 7 hours.

A copy of Mr. Schmitt's application for exemption is included in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Leland Schmitt, Jr.'s application for an exemption from various provisions in the Federal HOS regulations in 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–12467 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0042; Notice 1]

Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Continental Tire the Americas, LLC (''CTA''), has determined that certain Altimax RT 43 replacement passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* CTA filed an original noncompliance report dated April 20, 2021, and subsequently petitioned NHTSA on May 13, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of CTA's petition.

DATES: Send comments on or before July 11, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, NHTSA, (325) 655–0547, *Jayton.Lindley@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

CTA has determined that certain Altimax RT43 replacement passenger car tires do not fully comply with the requirements of paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). CTA filed a noncompliance report dated April 20, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTA subsequently petitioned NHTSA on May 13, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of CTA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Approximately three (3) Altimax RT43 replacement passenger car tires, size 175/65R14 82T, manufactured between March 8, 2020, and March 14, 2020, are potentially involved.

III. Noncompliance

CTA explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) that omits the 3-digit plant code and the 6-symbol manufacturer's identification mark as required by paragraph S5.5.1(b) of FMVSS No. 139 and paragraph 574.5(b). Specifically, the subject tires should have been labeled ''DOT 036 0F934V 1020'' on the outboard sidewall and ''DOT 036 0F934V'' on the inboard sidewall but were instead labeled ''DOT 1020'' on the outboard sidewall and ''DOT'' on the inboard sidewall.

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to this petition.

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of CTA's Petition

The following views and arguments presented in this section, ''V. Summary of CTA's Petition,'' are the views and arguments provided by CTA. They have not been evaluated by the Agency and do not reflect the views of the Agency. CTA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, CTA submitted the following reasoning:

CTA says that in most instances, it ''tests its tires to standards which exceed the FMVSS minimums.'' CTA asserts that ''the subject tires contain all the necessary sidewall markings to show compliance with FMVSS testing'' and that other than the incorrect TIN marking, the tires ''meet or exceed'' FMVSS No. 139 performance and labeling requirements.

According to CTA, the serial sidewall of the subject tires displays the correct DOT production week and year and when combined with other markings available on the tire, they can be uniquely identified.

CTA cites the following previous inconsequentiality petitions to support its argument:

a. Michelin North America, Inc., 85 FR 37495 (June 22, 2020).

b. Cooper Tire & Rubber Company, 82 FR 52966 (November 15, 2017).

c. Cooper Tire & Rubber Company, 82 FR 17510 (April 11, 2017).

CTA states that it is not aware of any tire failures related to performance that resulted in an accident, injury, property damage, customer complaint, or any field reports associated with the mislabeling.

CTA says that they have quarantined its current inventory of the noncompliant tires leaving three tires remaining in the market.

CTA concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–12405 Filed 6–8–22; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 111 June 9, 2022

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Dehumidifiers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0026]

RIN 1904–AE60

Energy Conservation Program: Test Procedure for Dehumidifiers

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedure for dehumidifiers. The proposed amendments would reference the current version of an applicable industry standard; allow the rating test period to be 2 or 6 hours; permit the use of a sampling tree in conjunction with an aspirating psychrometer for testing a dehumidifier with a single process air intake grille; and specify for dehumidifiers with network capabilities that all network functions must be disabled throughout testing. DOE is seeking comment from interested parties on the proposal.

DATES:

Comments: DOE will accept comments, data, and information regarding this proposal no later than August 8, 2022. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a webinar on Tuesday, July 12, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2019–BT–TP–0026. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to *Dehumidifier2019TP0026@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0026 in the subject line of the message. No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 287–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

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

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2019-BT-TP-0026.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.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.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE proposes to maintain previously approved incorporations by reference for ANSI/AMCA 210, ANSI/ASHRAE 41.1 and IEC 62301, and incorporate by reference the following industry standard into part 430:

Association of Home Appliance Manufacturers (''AHAM'') Standard DH–1–2017, ''Dehumidifiers,'' (''AHAM DH–1–2017'').

Copies of AHAM DH–1–2017 can be obtained from the Association of Home Appliance Manufacturers at *www.aham.org/ht/d/Store/.*

For a further discussion of these standards, see section IV.M of this document.

Table of Contents

I. Authority and Background
A. Authority
B. Background
C. Deviation From Appendix A
II. Synopsis of the Notice of Proposed Rulemaking
III. Discussion
A. General Comments
B. Scope of Applicability and Definitions
C. Test Procedure
1. Updates to Industry Standards
2. Variable-Speed Dehumidifiers
3. Psychrometer Setup
4. Whole-Home Dehumidifiers
5. Network Functions
6. Removal of Appendix X
D. Reporting
E. Test Procedure Costs and Harmonization
1. Test Procedure Costs and Impact
2. Harmonization With Industry Standards
F. Compliance Date
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
1. Description of Reasons Why Action Is Being Considered
2. Objectives of, and Legal Basis for, Rule
3. Description and Estimate of Small Entities Regulated
4. Description and Estimate of Compliance Requirements
5. Identification of Duplication, Overlap, and Conflict With Other Rules and Regulations
6. A Description of Significant Alternatives to the Rule
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
M. Description of Materials Incorporated by Reference
V. Public Participation
A. Participation in the Webinar
B. Procedure for Submitting Prepared General Statements for Distribution
C. Conduct of the Webinar
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

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) These products include dehumidifiers, the subject of this notice. DOE's energy conservation standards and test procedures for dehumidifiers are currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') 430.32(v); and 10 CFR part 430 subpart B appendix X1 (''appendix X1''), respectively. The following sections discuss DOE's authority to establish test procedures for dehumidifiers and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

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 dehumidifiers, the subject of this document. (42 U.S.C. 6291(34); 42 U.S.C. 6293(b)(13); 42 U.S.C. 6295(cc))

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

The 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 pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

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

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

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including dehumidifiers, 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. (42 U.S.C. 6293(b)(1)(A)(ii))

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. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if 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[3] and IEC Standard 62087[4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE last amended the test procedure for dehumidifiers on July 31, 2015 (''July 2015 Final Rule''), to provide technical clarifications and improve repeatability of the test procedure. 80 FR 45801. The July 2015 Final Rule also established a new test procedure for dehumidifiers at appendix X1 that, among other things, established separate provisions for testing whole-home dehumidifiers. *Id.* Manufacturers were not required to use appendix X1 until the compliance date of a subsequent amendment to the energy conservation standards for dehumidifiers. On June 13, 2016, DOE published a final rule establishing amended energy conservation standards for dehumidifiers, for which compliance was required beginning June 13, 2019. 81 FR 38337.

On June 30, 2021, DOE published in the **Federal Register** an early assessment review request for information (''RFI'') (''June 2021 TP RFI'') in which it sought data and information regarding issues pertinent to whether an amended test procedure would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product without being unduly burdensome to conduct. 86 FR 34640.

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

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

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

DOE also requested comments on specific topics relevant to the dehumidifier test procedure, including updates to industry test standards, variable-speed dehumidifiers, psychrometer setup, network functions, and ventilation air for whole-home dehumidifiers. *Id.*

DOE received comments in response to the June 2021 TP RFI from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2021 TP RFI

Commenter(s)	Docket document No.	Reference in this NOPR	Commenter type
Association of Home Appliance Manufacturers	3	AHAM	Trade Association.
Aprilaire, a division of Research Products Corporation (''RPC'') [5]	4	Aprilaire	Manufacturer.
Appliance Standards Awareness Project, American Council for an Energy-Efficiency Economy, and Natural Resources Defense Council.	5	Joint Commenters	Efficiency Organizations.
Madison Indoor Air Quality	6	MIAQ	Manufacturer.
Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison, and San Diego Gas and Electric Company (collectively, the California Investor-Owned Utilities (''IOUs'')).	7	California IOUs	Utility.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for a test procedure rulemaking. Section 8(b) of appendix A states that if DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it will provide further opportunities for early public input through **Federal Register** documents, including notices of data availability and/or RFIs. DOE is opting to deviate from this provision by publishing a NOPR following the early assessment review RFI because, as discussed previously, DOE requested comment on a number of specific topics in the June 2021 TP RFI, and comments received in response to the June 2021 TP RFI informed the proposals included in this NOPR.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to remove appendix X to subpart B of 10 CFR part 430 ''Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers.'' DOE proposes three changes to accomplish this: (1) amend 10 CFR 429.36 ''Dehumidifiers,'' by removing reporting requirements for dehumidifiers tested using appendix X; (2) amend 10 CFR 430.3 ''Materials incorporated by reference,'' by removing reference to the ENERGY STAR program requirements for dehumidifiers testing using appendix X; (3) amend 10 CFR 430.23 ''Test procedures for the measurement of energy and water consumption,'' by removing instructions for using appendix X in paragraph (z).

In this NOPR, DOE also proposes to amend appendix X1 as follows:

(1) Incorporate by reference the most recent version of the relevant industry test procedure, AHAM DH–1–2017, ''Dehumidifiers;''

(2) Amend the definitions for ''portable dehumidifier'' and ''whole-home dehumidifier'' to reference the manufacturer instructions available to a consumer as they relate to the ducting configuration and installation;

(3) Allow the rating test period in sections 4.1.1, 4.1.2, and 5.4 to be 2 or 6 hours;

(4) Add a provision in section 3.1.1.3 allowing for the use of a sampling tree in conjunction with an aspirating psychrometer for a dehumidifier with a single process air intake grille; and

(5) Add a requirement in section 3.1.2.3 that dehumidifiers with network functions be tested with the network functions in the ''off'' position if it can be disabled by the end-user; otherwise test in the factory default setting.

DOE's proposed actions are summarized in Table II.1 and Table II.2 compared to the current test procedure, as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED 10 CFR 429.36, 10 CFR 430.3, AND 10 CFR PART 430 SUBPART B RELATIVE TO CURRENT 10 CFR 429.36, 10 CFR 430.3, AND 10 CFR PART 430 SUBPART B

Current 10 CFR 429.36, 10 CFR 430.3, and 10 CFR part 430 subpart B	Proposed 10 CFR 429.36, 10 CFR 430.3, and 10 CFR part 430 subpart B	Attribution
10 CFR 429.36 requires manufacturers to provide the energy factor as public product-specific information for dehumidifiers tested in accordance with appendix X and the integrated energy factor for dehumidifiers tested according to appendix X1.	10 CFR 429.36 provides public product-specific information requirements for dehumidifiers tested in accordance with appendix X1 only.	Improve clarity of certification requirements.
10 CFR 430.3(m)(2) incorporates the ENERGY STAR Program Requirements by reference for appendix X.	10 CFR 430.3(m) omits reference to appendix X	Improve clarity of IBR section.
10 CFR 430.23(z) provides instructions for determining capacity and efficiency using appendix X or appendix X1.	10 CFR 430.23(z) provides instructions for determining capacity and efficiency using appendix X1 only.	Improve clarity of test procedure.
Subpart B contains appendix X and appendix X1	Subpart B contains appendix X1 only	Improve clarity of test procedure.

[5] DOE also received a request from Aprilaire to extend the comment period of the June 2021 TP RFI. (Docket No. EERE–2019–BT–TP–0026–0002) DOE declined to extend the comment period because the June 2021 TP RFI was a preliminary assessment and if DOE determined to initiate a rulemaking, DOE would provide additional opportunity for comment.

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for dehumidifiers. (Docket No. EERE–2019–BT–TP–0026, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document). The *regulations.gov* site appends the docket ID number at the end of a field labeled ID. For example, EERE–2019–BT–TP–0026–0002 has a docket ID of 2.

TABLE II.2—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Incorporates by reference American National Standards Institute (''ANSI'')/AHAM DH–1–2008.	Incorporates by reference AHAM DH–1–2017	Updated industry test method.
Defines ''portable dehumidifier'' and ''whole-home dehumidifier'' based on their designed purpose.	Defines ''portable dehumidifier'' and ''whole-home dehumidifier'' by reference to the manufacturer instruction as they relate to the ducting configuration and installation.	Improve clarity of definitions.
Does not allow for the use of a sampling tree for a dehumidifier with a single process air intake grille.	Adds provision to allow for the use of a sampling tree in conjunction with an aspirating psychrometer for a dehumidifier with a single process air intake grille.	Improve test procedure repeatability and reproducibility.
Requires a dehumidification mode rating test period of 6 hours	Allows two options for the length of dehumidification mode rating test period: 2 or 6 hours.	Reduce test burden while maintaining representativeness.
Does not explicitly address dehumidifiers with network functions	Adds a requirement to test dehumidifiers that offer network functions with the network functions in the ''off'' position if it can be disabled by the end-user; otherwise test in the factory default setting.	Ensure test procedure reproducibility.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of dehumidifiers, or require retesting or recertification solely as a result of DOE's adoption of the proposed amendments to the test procedures, if made final. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

In the following sections, DOE proposes certain amendments to its test procedures for dehumidifiers. For each proposed amendment, DOE provides relevant background information, explains why the amendment merits consideration, discusses relevant public comments, and proposes a potential approach.

A. General Comments

In response to the June 2021 TP RFI, DOE received comments from AHAM and MIAQ regarding the timing of the rulemaking process, specifically the importance of completing the test procedure rulemaking before the standards rulemaking begins. (AHAM, No. 3 at p. 3; MIAQ, No. 6 at p. 9) AHAM further stated that when DOE does not finish a test procedure rulemaking before the relevant standards rulemaking begins in earnest, DOE and stakeholders' time and efforts are wasted, the rulemaking process is complicated, and the overall rulemaking process is slowed. (AHAM, No. 3 at p. 3) MIAQ stated that this order is essential, as it lends to a more thorough review of the minimum levels via full understanding of the test procedure. (MIAQ, No. 6 at p. 9)

On June 4, 2021, DOE published an early assessment RFI to determine whether to amend applicable energy conservation standards for dehumidifiers. 86 FR 29964. (''June 2021 Standards RFI'') DOE requested data and information to help determine whether DOE should propose a ''no-new-standard'' determination. In particular, DOE asked for information showing a more stringent standard (a) would not result in a significant savings of energy, (b) is not technologically feasible, (c) is not economically justified, or any combination of the above. 86 FR 29964. DOE continues to evaluate the comments received and whether to propose amended energy conservation standards. As discussed later in this NOPR, DOE has tentatively determined that the changes proposed in this document would not impact the measured efficiency of a dehumidifier, were DOE to finalize the amendments as proposed.

In response to the June 2021 TP RFI, MIAQ also reiterated its comment to the June 2021 Standards RFI regarding its concern about any reduction in test requirements or energy conservation standards for smaller capacity dehumidifiers. MIAQ expressed its understanding that units they have identified as consumer product dehumidifiers are typically less expensive products purchased through retailers, and that homeowners may opt to purchase multiple portable dehumidifiers to meet their latent load requirements instead of a single whole-home or crawlspace dehumidifier. MIAQ stated that this may lead to significant increases in energy consumption. MIAQ further stated that a balanced requirement for efficiency and testing procedures could reduce this waste. (MIAQ, No. No 6 at p. 9)

DOE notes that issues regarding minimum efficiency requirements would be addressed in an energy conservation standards rulemaking for dehumidifiers, were DOE to publish such proposal. As for reduced test requirements, DOE notes that, as required in 42 U.S.C. 6293(b)(3), any new or amended test procedure shall be reasonably designed to measure energy use during a representative average use cycle and shall not be unduly burdensome to conduct. DOE also notes that the July 2015 Final Rule discusses the representativeness and test burden considerations associated with the current test procedure for portable and whole-home dehumidifiers. 80 FR 45801, 45810–45812.

B. Scope of Applicability and Definitions

EPCA defines a dehumidifier as a self-contained, electrically operated, and mechanically encased assembly consisting of (1) a refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)) In the July 2015 Final Rule, DOE codified a regulatory definition of ''dehumidifier'' that clarified the definition by excluding products that may provide condensate removal or latent heat removal as a secondary function. 80 FR 45801, 45805. DOE therefore adopted a definition that explicitly excludes portable air conditioners, room air conditioners, and packaged terminal air conditioners, because these are products that may provide condensate removal or latent heat removal as a secondary function. As codified at 10 CFR 430.2, DOE defines ''dehumidifier'' as:

A product, other than a portable air conditioner, room air conditioner, or packaged terminal air conditioner, that is a self-contained, electrically operated, and mechanically encased assembly consisting of—

(1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere;

(2) A refrigerating system, including an electric motor;

(3) An air-circulating fan; and

(4) A means for collecting or disposing of the condensate.

Consumer products meeting this definition are subject to DOE's regulations for testing, certifying, and complying with energy conservation standards.

In the July 2015 Final Rule, DOE established definitions for two groups of dehumidifiers: ''portable dehumidifiers'' and ''whole-home dehumidifiers.'' 80 FR 45801, 45805. A ''portable dehumidifier'' is a dehumidifier designed to operate within the dehumidified space without ducting (although means may be provided for optional duct attachment). 10 CFR 430.2. A ''whole-home dehumidifier'' is a dehumidifier designed to be installed with ducting to deliver return process air to its inlet and dehumidified process air to one or more locations in the dehumidified space. *Id.* The July 2015 Final Rule also established a definition for ''refrigerant-desiccant dehumidifier'' to mean a whole-home dehumidifier that removes moisture from the process air by means of a desiccant material in addition to a refrigeration system. *Id.*

In the June 2021 TP RFI, DOE sought comment on whether (1) the current definitions of ''dehumidifier,'' ''portable dehumidifier,'' and ''whole-home dehumidifier'' require amendment, and if so, how the terms should be defined; and (2) the existing product definitions in 10 CFR 430.2 for dehumidifiers require amendments to distinguish further between portable and whole-home units. If so, DOE also sought information on what identifying characteristics may be included in potential amended definitions to differentiate better between the two configurations. 86 FR 34640, 34641–34642.

In response to the June 2021 TP RFI, MIAQ stated that the current definitions of ''dehumidifier,'' ''portable dehumidifier,'' and ''whole-home dehumidifier'' should be amended to refine the classification of these units. MIAQ further stated that, without proper classification, it is difficult for the dehumidifier and heating, ventilation, and air-conditioning (''HVAC'') industry and associated regulatory entities to determine which regulations apply to their products and that additional clarity in the definitions of different dehumidification products would allow test conditions and regulations to be refined for each product type.

MIAQ recommended amending the definition of ''dehumidifier'' by specifying in the introductory paragraph that a dehumidifier is ''designed primarily for the purpose of removing moisture from the air.'' (MIAQ, No. 6 at p. 2)

MIAQ asserted that a packaged (unitary) air conditioner is a unit that meets enumerated criteria in the definition, (1)–(4), but is built for the purpose of cooling the air, not primarily removing moisture. MIAQ also asked that DOE consider a definition that includes dehumidifiers with external heat rejection, which MIAQ described as units that provide cool, dry air like an air conditioner, except the focus is on obtaining the proper level of dehumidification first and cooling is a by-product of the process. (MIAQ, No. 6 at p. 3)

As stated in the July 2015 Final Rule, the primary function of an air conditioner is to provide cooling by removing both sensible and latent heat, whereas a dehumidifier is intended to remove only latent heat. 80 FR 45801, 45804. Accordingly, DOE explicitly excluded from the definition portable air conditioners, room air conditioners, and packaged terminal air conditioners. These explicit exclusions include the unitary air conditioning products of concern to MIAQ. Any other non-dehumidifier product on the market that would meet the definition of ''dehumidifier'' is already explicitly excluded. Accordingly, DOE tentatively finds that the explicit exclusions in the regulatory definition of dehumidifier already address MIAQ's concern. Therefore, DOE is not proposing to add exclusions to the dehumidifier definition.

DOE requests comment on (1) its preliminary determination that the explicit exclusions from the definition of ''dehumidifier'' sufficiently distinguish dehumidifiers from consumer products that provide cooling by removing both sensible and latent heat, and (2) whether there are products on the market that are not explicitly excluded from the ''dehumidifier'' definition but should be.

MIAQ also suggested that the definition of ''refrigerant-desiccant dehumidifier'' be expanded to include units that do not include a refrigeration system and specify that such units may include a combustion process or electric resistance heat to regenerate the desiccant. MIAQ recommended replacing the term ''refrigerant-desiccant dehumidifier'' with ''desiccant dehumidifier''.

MIAQ stated that, with the increase of individuals with severe allergies, there is an increased demand for the use of desiccant dehumidifiers like those used in the industrial markets to reduce the relative humidity of dwellings to 40 percent or less. (MIAQ, No. 6 at p. 3)

DOE notes that desiccant dehumidifiers without refrigerant systems are outside of the scope of dehumidifiers as defined by EPCA. As described above, the statutory definition of dehumidifier is limited to units with a refrigerating system. (42 U.S.C. 6291(34)) Therefore, DOE is not proposing to expand the definition of refrigerant-desiccant dehumidifier as suggested by MIAQ. Units that may include a combustion process or electric resistance heat to regenerate the desiccant are covered products if they meet the definition of ''dehumidifier'' or any other covered product or equipment.

MIAQ further suggested replacing the existing term ''portable dehumidifier'' with ''consumer product dehumidifier,'' adding the term ''crawl space dehumidifier,'' and amending the definition of ''whole-home dehumidifier.'' MIAQ recommended defining ''consumer product dehumidifier'' as a dehumidifier that can be purchased by the end-user through retail channels for individual use, is used as a free-standing appliance without the option for ducting; and is not subject to code inspection prior to operation and is controlled by an on-board sensor. MIAQ recommended defining ''crawlspace dehumidifier'' as a dehumidifier designed to operate within the dehumidified space without the attachment of additional ducting, although means may be provided for optional duct attachment; is used in typically unoccupied areas such as a crawlspace or unfinished basement; and is controlled by an on-board sensor or sensor placed in the same space as the dehumidifier. MIAQ recommended amending the definition of ''whole-home dehumidifier'' to mean a dehumidifier designed to be installed with ducting set up to provide process air to the unit's inlet that originates from the dwelling, from outside for ventilation purposes, or a combination of both; the unit is then ducted to supply dehumidified process air from its outlet to one or more locations in the dehumidified space; and the unit will have the capability of being controlled using a remote humidity sensor. (MIAQ, No. 6 at p. 3)

MIAQ asserted that its recommended changes to terminology and definitions would avoid confusion with the use of ''dehumidifier'' or ''residential dehumidifier'' by state and federal regulatory agencies (*e.g.,* U.S. Environmental Protection Agency (''EPA''), California Air Resource Board, State of Washington) when referring to

either what MIAQ has recommended to define as ''consumer product dehumidifiers,'' or all dehumidifiers used for residential dwellings. MIAQ further asserted that its suggested terms and definitions would avoid confusion with commercial, industrial, and agricultural dehumidifiers, and would allow a better separation of test conditions applicable to each product's intended use. (MIAQ, No. 6 at pp. 3–4)

The California IOUs encouraged DOE to clarify how the current dehumidifier definitions apply to non-residential dehumidifiers, such as horticultural dehumidifiers. (California IOUs, No. 7 at pp. 1–2)

DOE does not agree with MIAQ's suggested terminology changes. Renaming portable dehumidifiers as ''consumer product dehumidifiers'' as suggested by MIAQ may give the incorrect impression that the other defined dehumidifiers are not consumer products. Further, the justification for delineating ''crawlspace dehumidifiers'' from the other categories of dehumidifiers is unclear. DOE is not aware of any units within the suggested definition of ''crawlspace dehumidifier'' that have physical features that would distinguish such units from ''portable dehumidifiers.'' Moreover, regarding MIAQ's suggestion to base the ''whole-home dehumidifier'' definition on the intended installation location for installing the unit, intent suggests subjectivity. This approach would not only reduce regulatory transparency but also create challenges for enforcement. DOE has previously rejected such an approach in a test procedure final rule for commercial prerinse spray valves published by DOE in the **Federal Register** on March 11, 2022. 87 FR 13901, 13904. Additionally, the test conditions suggested by MIAQ for ''crawlspace dehumidifiers'' are the same as for portable dehumidifiers in appendix X1.

With respect to horticultural dehumidifiers and other dehumidifiers marketed for non-residential applications, DOE notes that dehumidifiers are ''consumer products.'' (*See generally* 42 U.S.C. 6291(2); 42 U.S.C. 6295(a)(1); 42 U.S.C. 6295(cc)) EPCA defines a ''consumer product'' as any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type (A) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(1)) Accordingly, to the extent that a dehumidifier model is of a type distributed in commerce for personal use or use by an individual, it would be within the scope of the dehumidifier test procedure, regardless of how it is marketed and whether the model is distributed for personal or individual use. DOE has published guidance on making ''of a type'' determinations at *www.energy.gov/gc/enforcement-policies-and-statements,* ''Guidance Concerning Consumer/Commercial Distinction''.

A manufacturer may submit a petition to waive any appendix X1 requirements if it believes that its dehumidifier contains one or more design characteristics which either prevent testing of the basic model according to appendix X1 or that appendix X1 evaluates the dehumidifier in a manner so unrepresentative of its true energy and/or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a). The petition should suggest an alternative method for testing the basic models identified in the waiver. 10 CFR 430.27(b)(1)(iii).

The California IOUs encouraged DOE to clarify how dehumidifiers are categorized by product class and suggested using the distinction between ducted and ductless units to better differentiate the range of products that are available. The California IOUs also requested that DOE clarify the applicability of the appendix X1 test procedure to larger units, commenting that the test procedure in appendix X1 does not limit scope by capacity, but that ANSI/AHAM Standard DH–1–2008, ''Dehumidifiers,'' (''ANSI/AHAM DH–1–2008'') has a capacity limit of 185 pints/day. The California IOUs also recommended that DOE consider addressing steam cabinets, which they described as an emerging product that deodorizes, sanitizes, and dries clothes using heat pump technology and that operates like a portable dehumidifier. (California IOUs, No. 7 at pp. 1–3)

DOE notes that the current definitions for portable and whole-home dehumidifiers already address whether a unit is designed to be installed or operated with or without ducting. As described, a whole-home dehumidifier is defined as a dehumidifier designed to be *installed with ducting* (emphasis added) to deliver return process air to its inlet and to supply dehumidified process air from its outlet to one or more locations in the dehumidified space. By contrast, a portable dehumidifier is defined as a dehumidifier designed to operate within the dehumidified space *without the attachment of additional ducting* (emphasis added), although a means may be provided for optional duct attachment. However, DOE understands that the ''designed to'' wording in these definitions may imply that DOE makes subjective determinations about how a dehumidifier is categorized and may lead to confusion. Therefore, in this NOPR, DOE proposes to change the portable dehumidifier and whole-home dehumidifier definitions to reference manufacturer instructions available to a consumer as they relate to the ducting configuration and installation. DOE proposes to define a portable dehumidifier as a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates within the dehumidified space without the attachment of additional ducting, although means may be provided for optional duct attachment. DOE proposes to define a whole-home dehumidifier as a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates with ducting to deliver return process air to its inlet and to supply dehumidified process air from its outlet to one or more locations in the dehumidified space.

DOE requests comment on the proposed amended definitions for portable dehumidifier and whole-home dehumidifier.

The applicability of the Federal test procedure is not limited by capacity. DOE acknowledges that ANSI/AHAM DH–1–2008 specifies a capacity limit. While certain provisions of ANSI/AHAM DH–1–2008 have been adopted as part of the Federal test procedure, section 1 of appendix X1 specifies the Federal test procedure must be used to measure the energy performance of dehumidifiers regardless of capacity.

With regard to steam cabinets, these products may use heat pump technology to remove moisture from clothing in an enclosed cabinet, and in some cases, are advertised as capable of removing moisture from the room. To the extent that a steam cabinet, or any product, meets the definition of a dehumidifier, and, in particular, condenses moisture from the atmosphere, DOE would consider it to be a dehumidifier and subject to energy conservation standards. Furthermore, DOE tentatively concludes that steam cabinets that remove moisture from the room can be tested in accordance with the proposed dehumidifier test procedure. If a manufacturer believes that its dehumidifier's performance is not accurately reflected by the test

procedure, it is encouraged to provide comment in response to this document and to submit a waiver request containing an alternate test procedure for consideration.

C. Test Procedure

Dehumidifiers are tested in accordance with appendix X1, which adopts certain text provisions from ANSI/AHAM DH–1–2008, with modification. In part, the DOE test procedure specifies a different dry-bulb temperature (65 degrees Fahrenheit (''°F'') for portable dehumidifiers and 73 °F for whole-home dehumidifiers) than ANSI/AHAM DH–1–2008, while still maintaining the relative humidity specified by ANSI/AHAM DH–1–2008, and specifies provisions for inactive, off-cycle, and off mode testing. *See* Sections 4.1.1 and 3.2 of appendix X1. Appendix X1 also includes instructions regarding instrumentation, condensate collection, control settings, setup, and ducting for whole-home dehumidifiers. *See* Sections 3.1.2.2; 3.1.1.4; 3.1.1.5; 3.1.1.1; and 3.1.3 of appendix X1.

Under the current test procedure, a unit's capacity is the volume of water, in pints, the unit removes from the ambient air per day, normalized to a standard ambient temperature and relative humidity. *See* Section 2.14 of appendix X1. The Integrated Energy Factor (''IEF''), representing the efficiency of the unit expressed in liters per kilowatt-hour, is the ratio between the capacity and the combined amount of energy consumed by the unit in dehumidification mode and standby and/or off mode(s), adjusted for the representative number of hours per year spent in each mode. *See* Section 5.4 of appendix X1.

1. Updates to Industry Standards

As discussed, the dehumidifier test procedure at appendix X1 references ANSI/AHAM DH–1–2008, an industry test procedure for dehumidifiers, with modification. In 2017, AHAM published a revision to AHAM DH–1, AHAM DH–1–2017, which established provisions for testing dehumidifier energy use in off-cycle, inactive, and off modes, and for including energy consumption in those modes in efficiency calculations. AHAM DH–1–2017 also added guidance for instrumentation setup, multiple air-intakes, and control settings; lowered a temperature; and tightened tolerances. It lowered the standard dry-bulb temperature condition for dehumidifiers from 80 °F (as in ANSI/AHAM DH–1–2008) to 65 °F (with the required wet-bulb temperature changing accordingly to maintain the same relative humidity) and tightened the maximum allowed variation for dry-bulb and wet-bulb temperature readings from 2.0 °F to 1.0 °F and from 1.0 °F to 0.5 °F, respectively.

In the June 2021 TP RFI, DOE requested comment and information on (1) whether the references to ANSI/AHAM DH–1–2008 at appendix X1 should be updated to the current version, AHAM DH–1–2017; (2) how updating the references in appendix X1 to AHAM DH–1–2017 would impact the measured energy efficiency of dehumidifiers tested under the current DOE test procedure; (3) the reduction of the maximum-allowed temperature variation in AHAM DH–1–2017, the potential test burden increase from this change, and any effects on reliability or reproducibility of results; and (4) whether any modifications to AHAM DH–1–2017, other than modifications consistent with those made to ANSI/AHAM DH–1–2008 in the current DOE test procedure, would be needed to ensure that DOE's test procedure produces results that are representative of an average use cycle and is not unduly burdensome to conduct. 86 FR 34640, 34642.

AHAM stated that it convened a task force to review and evaluate possible revisions to its 2017 test procedure, AHAM DH–1–2017. AHAM further stated that, working with DOE and its contractors, it expects to conduct investigative testing on any changes to the test procedure to ensure that revisions to AHAM DH–1–2017 are supported by test data. AHAM stated that its goal was to have all investigative testing complete and a revised test procedure to share officially with DOE by December 22, 2021, which would be publicly available on AHAM's website. AHAM further stated that it expects the task force will then conduct round robin testing and validation testing to examine repeatability, reproducibility, accuracy, and impact of changes on measured efficiency, which will be used as a basis for finalizing the test procedure in 2022. AHAM encouraged DOE to participate in the process and allow its completion before considering any independent activity on test procedure development, stating that the goal of the process is to create an updated version of AHAM DH–1 that DOE can adopt as the energy test for dehumidifiers. (AHAM, No. 3 at p. 2)

Aprilaire and MIAQ commented in support of the incorporation by reference of AHAM DH–1–2017. (Aprilaire, No. 4 at p. 1; MIAQ, No. 6 at p. 4)

DOE appreciates the efforts underway by AHAM and the task force group members to further consider improvements to the DH–1 test procedure, and to then conduct round-robin and validation testing. DOE notes that on March 30, 2022, the task force released a publicly available draft version of the updated standard, AHAM DH–1–2022,[7] but has not yet finalized the standard. DOE has reviewed the changes to AHAM DH–1–2017 made in the draft and in this NOPR has either proposed to adopt the changes or raised them for comment. If the updated DH–1 is finalized during the course of this rulemaking, DOE would consider adopting that updated version to the extent it is consistent with the discussions presented in this document.

DOE received no comments on the impacts to energy efficiency measured by appendix X1 resulting from the adoption of AHAM DH–1–2017. DOE notes that the modified dry-bulb temperature in AHAM DH–1–2017 aligns the industry test procedure with the dry-bulb temperature already required by appendix X1. DOE tentatively concludes that referencing AHAM DH–1–2017 would not impact the energy efficiency measured by appendix X1. Where applicable, specifically in section 4.2 of appendix X1, DOE also proposes to reference section 9.3.2 of AHAM DH–1–2017 for off-cycle mode test requirements/instructions as AHAM DH–1–2017 reflects the language of appendix X1. *See* section 4.2 of appendix X1.

MIAQ and Aprilaire stated that there would not be an appreciable change in test burden resulting from the tightening of the tolerances required for testing purposes, and Aprilaire further commented that it has not had difficulty achieving these conditions while testing. (MIAQ, No. 6 at pp. 4–6, Aprilaire, No. 4 at p. 1) MIAQ also stated that it believes currently available instrumentation can easily provide the level of accuracy required in AHAM DH–1–2017 and that such a requirement provides performance data at an improved accuracy. (MIAQ, No. 6 at pp. 4–6)

MIAQ suggested changing the wet-bulb temperature measurements and requirements to dewpoint temperature to match the readout of modern instrumentation. MIAQ further stated that this change would capture the variable of greater interest to the dehumidification industry. (MIAQ, No. 6 at p. 6)

DOE is not proposing to amend the test conditions in appendix X1 from

[7] AHAM DH–1–2022 (Dehumidifiers)—DRAFT is available for free on AHAM's website: *www.aham.org/ItemDetail?iProductCode=12022&Category=MADSTD.*

wet-bulb temperature to dewpoint temperature. DOE notes that the latest version of the industry test method, AHAM DH–1–2017, uses wet-bulb temperature. DOE understands the use of wet-bulb temperature in AHAM DH–1–2017 reflects the general consensus of the industry at this time.

DOE requests comment on the proposal to incorporate AHAM DH–1–2017 by reference. DOE requests comment on the proposal not to change specifying ambient conditions based on wet-bulb temperature, as currently specified, as opposed to (or in addition to) dewpoint temperature.

2. Variable-Speed Dehumidifiers

a. Variable-Speed Compressors

In the June 2021 TP RFI, DOE stated that it is aware that dehumidifiers are available on the U.S. market that incorporate variable-speed compressors; *i.e.,* ''variable-speed dehumidifiers.'' 86 FR 34640, 34642. The current test procedure does not specifically account for this technology. A variable-speed compressor can operate at a variety of speeds rather than just the single speed achievable by conventional compressors. A single-speed compressor cycles on and off during operation, which can introduce inefficiencies in performance often referred to as ''cycling losses.'' Whereas, a variable-speed compressor is able to adjust its speed up or down during operation, thereby reducing or eliminating cycling losses. Variable-speed units may avoid condensate re-evaporation into the ambient room air, which can occur when a dehumidifier cycles off its compressor but not its fan during off-cycle mode. The current test procedure in appendix X1 does not capture any ''cycling losses'' for single-speed dehumidifiers (and avoidance of such losses for variable-speed dehumidifiers) because the test unit operates at full capacity throughout the test.

In the July 2015 Final Rule, DOE considered a load-based test for dehumidifiers, which would capture cycling behavior in dehumidifiers with single-speed compressors or speed modulation for variable-speed dehumidifiers. The load-based test would involve adding moisture to the test chamber at a fixed rate and allowing the control system of the dehumidifier to respond to changing moisture levels in the room. 80 FR 45801, 45809. DOE elected not to adopt a load-based test for the dehumidifier test procedure in the July 2015 Final Rule, due to concerns about the potential increase in test burden. *Id.* at 80 FR 45810. Section III.C.2.c of this document discusses load-based testing in greater detail.

In the June 2021 TP RFI, DOE sought data on single-speed dehumidifiers as follows: (a) their energy use when cycling on and off due to varying relative humidity in the room, (b) the extent of re-evaporation when operating in off-cycle mode, and (c) the effect of re-evaporation on dehumidification mode efficiency. DOE also sought feedback and data related to load-based testing, in particular, any alternative test methods that may produce results that are more representative of variable-speed dehumidifier energy consumption, including, but not limited to, a load-based test approach and information about the nature and extent of the test burden associated with a load-based test for dehumidifiers. 86 FR 34640, 34642.

In response to the June 2021 TP RFI, AHAM stated that variable-speed dehumidifiers do exist on the market, but that DOE should not assume that variable-speed compressors are a viable technology option for improving efficiency for dehumidifiers like they are for products such as room air conditioners. AHAM commented that, for dehumidifiers, a slowing compressor may prevent or inhibit the product reaching the dew point, thus making it difficult to determine how much energy would be saved through the use of a variable-speed compressor. AHAM suggested this may be why test procedure waivers have not been sought for dehumidifiers with variable-speed compressors—the existing test procedure correctly measures their efficiency. AHAM further stated that DOE should thoroughly investigate how this technology works in dehumidifiers before concluding that a variable-speed compressor is a design option to increase efficiency for portable dehumidifiers. AHAM stated that the task force will examine whether AHAM DH–1–2017 needs updating to take into account variable-speed compressors. (AHAM, No. 3 at pp. 2–3)

Aprilaire stated it does not produce household whole-home dehumidifiers with a variable-speed compressor and is unaware of any manufacturer that does. (Aprilaire, No. 4 at p. 1) MIAQ similarly stated it does not offer variable-speed compressors in any of its dehumidifiers. (MIAQ, No. 6 at p. 6)

MIAQ stated that variable-speed compressors are not used in the stand-alone dehumidifiers manufactured by its Therma-Stor brands for the commercial, industrial, agricultural, and restoration markets, and that variable-speed compressors are not used in the MIAQ product line except for its integrated HVAC products exceeding 20 tons of compressor capacity that focus on dehumidification for the agriculture industry. MIAQ stated, based on its experience, research and development, and market research, that variable-speed compressors in dehumidifiers offer little improvement in terms of efficiency and operational benefits over single-speed compressors, especially for residential dehumidifier applications, and do not result in a reasonable payback to the consumer. MIAQ stated that although variable-speed compressors are beneficial for residential air conditioners, the same is not the case for mechanical dehumidifiers because their operation is much different due to their function of removing water from the air—to properly function, the evaporator temperature must always be significantly lower than the dewpoint of the air. MIAQ further stated that when there is a call for dehumidification, the unit operates at full capacity to pull the moisture from the air until the setpoint is reached, meaning there is little opportunity for savings from slowing the compressor or increasing the evaporator temperature. (MIAQ, No. 6 at pp. 6–7)

Based on DOE's evaluation, and consistent with the points raised by commenters, given that dehumidifiers must maintain evaporator temperatures below the dew point to efficiently remove water from the air, variable-speed dehumidifiers may not be able to achieve significant efficiency gains over single-speed units. However, there could be some efficiency gains if the variable-speed compressor is inherently more efficient.

Variable-speed dehumidifiers may avoid significant condensate re-evaporation into the ambient room air, which can occur when a dehumidifier cycles off its compressor but not its fan during off-cycle mode to defrost the heat exchanger. Although it is possible that variable-speed dehumidifiers could reduce the number of defrost cycles or avoid them altogether by reducing compressor speed to raise the evaporator temperature while still dehumidifying the room, DOE is not aware of any data showing this. DOE has not observed any defrost cycles in its current market-representative sample of units when testing in accordance with the appendix X1 test, conducted at a dry-bulb temperature of 65 °F, which is representative of typical dehumidifier operation (see section III.B.3 of this document). At operating temperatures at or below 55 °F, defrost cycles are possible, and for some units likely. However, those temperatures are far less likely to occur with a level of humidity

high enough to lead to operating a dehumidifier than at the current operating test conditions in appendix X1 (*i.e.,* 65 °F), as discussed in the following section.

DOE requests information and data regarding any efficiency and performance benefits associated with variable-speed dehumidifiers, both generally and relative to those with single-speed dehumidifiers.

b. Multiple Test Conditions

The current test procedure specified in appendix X1 requires one test condition for each category of dehumidifier: a dry-bulb temperature of 65 °F for portable dehumidifiers and 73 °F for whole-home dehumidifiers. *See* Section 4.1.1 of appendix X1.

In response to the June 2021 TP RFI, DOE received comments from the Joint Commenters and MIAQ advocating for multiple test conditions rather than the current single test condition. (Joint Commenters, No. 5 at p. 2; MIAQ, No. 6 at pp. 4–6) The Joint Commenters stated that dehumidifiers are likely to encounter frost conditions in the field, but that the current DOE test procedure at appendix X1 may not capture defrost performance because manufacturers would likely adjust a unit's controls or refrigeration system operation to avoid triggering defrost at 65 °F. *See* Section 4.1.1 of appendix X1. The Joint Commenters referred to their comments on the dehumidifiers test procedure NOPR published by DOE in the last rulemaking on May 21, 2014 (79 FR 29271, ''May 2014 NOPR''), in which they encouraged DOE to consider requiring a test at a dry-bulb temperature of less than 65 °F (*e.g.,* 55 °F) to capture defrost performance in addition to testing at 65 °F. The Joint Commenters asserted that capturing defrost performance would encourage improved defrost methods and controls. They stated that in the July 2015 Final Rule, DOE recognized the value of testing at additional temperatures but determined that soil temperatures [8] below 55 °F would be limited during the dehumidification season (*citing* 80 FR 45801, 45808). They encouraged DOE to reevaluate the use of soil temperatures as a proxy for basement and other sub-ground level location temperatures, reexamine whether there are significant operating hours below 65 °F, and investigate at what temperature defrost is typically activated. (Joint Commenters, No. 5 at p. 2)

MIAQ also recommended requiring an additional test condition to provide additional information to homeowners and HVAC professionals to aid in their selection of a dehumidifier for their application. MIAQ stated that such additional testing would not create an unnecessary burden. MIAQ specifically recommended separating products that they suggested defining as ''consumer product dehumidifiers'' into three product classes (25 pints/day or less, 25.01 to 50 pints/day, and greater than 50 pints/day) and two different test conditions (65 °F dry-bulb and 73 °F dry-bulb, both with 60-percent relative humidity and 0 inches of water column (''in. w.c.'') external static pressure (''ESP'')). MIAQ asserted that the products they suggested defining as ''consumer product dehumidifiers'' are typically used, unducted, in the basement of a dwelling or in the living space. MIAQ also asserted that the suggested test conditions represent a unit placed in the basement (*i.e.,* 65 °F dry-bulb) and a unit placed in the living space (*i.e.,* 73 °F dry-bulb). Additionally, MIAQ suggested that DOE define certain products as ''crawlspace dehumidifiers,'' create three product classes (50 pints/day or less, 50.01 to 75 pints/day, and greater than 75 pints/day), and adopt one test condition (65 °F dry-bulb, 60-percent relative humidity, and 0 in. w.c. of ESP). MIAQ asserted that these products are typically used, unducted, in the crawlspace below a dwelling or in the primarily unoccupied basement and that the suggested test conditions represent a unit placed in the crawlspace or unoccupied basement. MIAQ stated that providing data at these expanded conditions would not be an undue burden on manufacturers and that HVAC professionals often request unit performance at these conditions and many others. (MIAQ, No. 6 at pp. 4–6)

As noted, the current DOE test procedure at appendix X1 measures portable dehumidifier performance and efficiency during operation at 65 °F. As discussed in the May 2014 NOPR, before proposing the 65 °F test condition, DOE conducted research regarding the typical ambient air conditions and soil conditions under which residential portable and whole-home dehumidifiers operate. 79 FR 29271, 29277–29278. DOE conducted its analysis based on regions with reported dehumidifier ownership per available data at the time of the analysis. DOE limited its analysis to times of expected dehumidifier use: the months industry identifies for dehumidifier usage (April–October) and hours of those months above 60-percent relative humidity, which is the typical setpoint for a dehumidifier. DOE found the weighted-average air temperature was 64.1 °F and weighted-average soil temperature was 65.2 °F. These closely match the current single test condition of 65 °F. *Id.* Based on these analyses described in the May 2014 NOPR, DOE confirmed in the July 2015 Final Rule that the 65 °F dry-bulb temperature is representative of the majority of conditions during periods of dehumidifier use. 80 FR 45801, 45808–45809.

As discussed previously and in the July 2015 Final Rule, DOE understands that measuring portable dehumidifier performance at 55 °F may be desirable to capture defrost performance, and, for variable-speed dehumidifiers, potential defrost cycle avoidance or mitigation. 80 FR 45801, 45808. In the July 2015 Final Rule, DOE stated that the usefulness of determining performance at extreme conditions did not warrant the additional test burden associated with testing at 80 °F or 55 °F, or any other test condition. 80 FR 45801, 45808–45809. For this NOPR, DOE reevaluated the relative benefits and burdens that would result from requiring testing at additional test conditions, including a 55 °F condition. As part of this analysis, DOE reviewed 2015 hourly air temperature, soil temperature, and ambient relative humidity data from the National Climatic Data Center (''NCDC'') of the National Oceanic and Atmospheric Administration (''NOAA''),[9] collected at weather stations in each state and region for which dehumidifier ownership data were available. DOE used the Energy Information Administration's Residential Energy Consumption Survey (''RECS'') from 2015 (''RECS 2015''),[10] the most recent version of the full dataset available at the time of this analysis, to weight the temperature data based on dehumidifier ownership. Figure 1 shows this weighted-average soil temperature and ambient air temperature data throughout the dehumidification season (*i.e.,* between April and October, and corresponding with hours of ambient air relative humidity at or above 60 percent, at which dehumidifier operation is expected).[11]

[8] In the July 2015 Final Rule, DOE used soil temperature data as a proxy for basement air temperatures. This approach is also discussed further.

[9] NCDC of NOAA hourly temperature and relative humidity data are available at *www.ncdc.noaa.gov/cdo-web* (Last accessed January 31, 2022).

[10] 2015 RECS survey data are available at *www.eia.gov/consumption/residential/data/2015/* (Last accessed January 31, 2022).

[11] As discussed in the May 2014 NOPR, 60-percent relative humidity represents an upper bound for an ambient humidity condition that consumers would find acceptable and is therefore

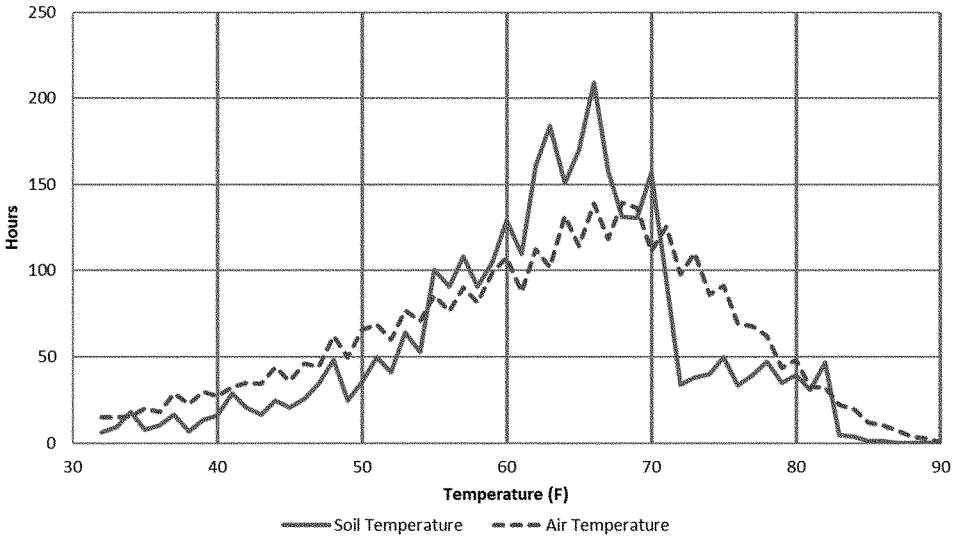


Figure 1: Weighted-Average Air and Soil Temperature during Dehumidification Season (April – October)

Both the soil and ambient air temperature data indicate that the temperature follows a roughly normal distribution centered around a mean of approximately 65 °F. As discussed, the current test procedure represents this distribution as a single test point at 65 °F. To consider further potential modifications to the test procedure to represent variable-speed dehumidifier operation, DOE considered the possibility of a multiple-temperature test in which, instead of a single test condition at the approximate peak of the normal distribution, three test conditions would represent the distribution of air and soil temperatures. The three test conditions would span a range both below and above the ''peak'' of the normal distribution. DOE investigated a three-temperature test, with tests at 55 °F, 65 °F, and 80 °F,[12] all with the same 60-percent relative humidity. These temperatures would capture as wide of a temperature range as possible while remaining representative of the peak of the temperature distribution curves. Performance at more extreme temperatures (*i.e.,* below 55 °F and above 80 °F) are encountered much less frequently by comparison, as shown by the data in Figure 1.

DOE conducted investigative testing of a variable-speed dehumidifier and a single-speed dehumidifier with similar capacity from the same manufacturer to understand two points. First, DOE sought to assess the potential for efficiency improvements from variable-speed dehumidifiers. Second, DOE examined the extent to which any such improvements would be captured by the current single test condition and by a multiple-condition test. Figure 2 shows the results from testing both dehumidifiers at the three different dry-bulb temperature conditions of 55 °F, 65 °F (the test condition specified in appendix X1), and 80 °F (the test condition specified in appendix X). To better show the dehumidification mode performance that would be affected by the changing operating conditions, DOE is presenting the values on the graph in Figure 2 using efficiency factor (''EF''), which addresses only dehumidification mode energy use, rather than the IEF, which includes standby/inactive mode and off-cycle mode energy use. The operating temperature is unlikely to affect the energy use in standby/inactive mode and off-cycle mode.

the threshold above which DOE expects dehumidifier operation. 79 FR 29271, 29276–29282.

[12] Commenters suggested a highest temperature condition of 75 °F. DOE performed its evaluation using 80 °F instead because the DOE test procedure required for use prior to the compliance date of the current energy conservation standards (*i.e.,* appendix X) specified a test condition of 80 °F.

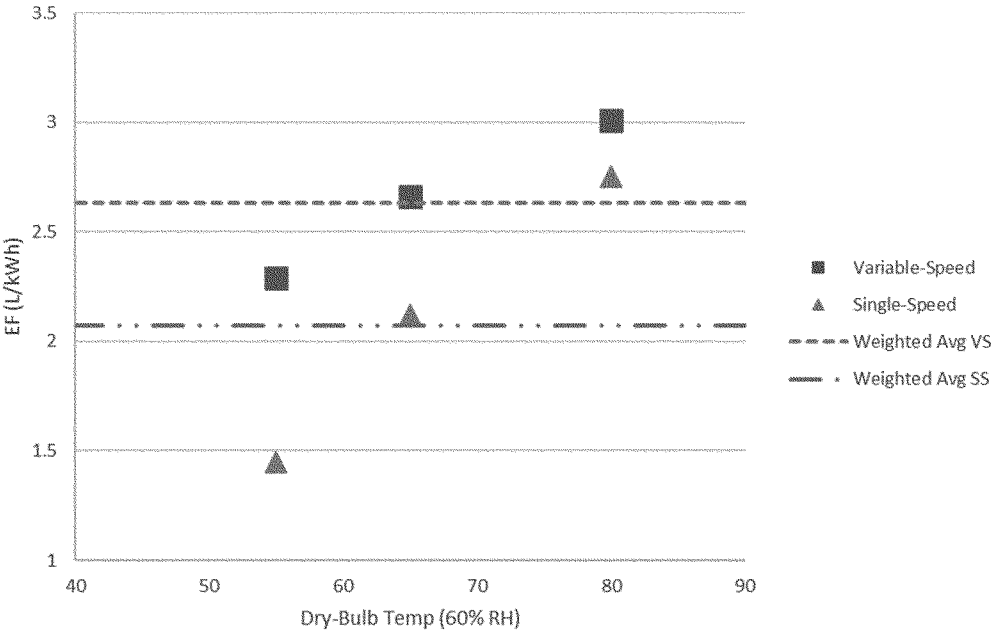


Figure 2: Single-Speed vs. Variable-Speed Dehumidifier Performance at Three Test Conditions

The results from this testing show that, for the tested units, there are significant differences in the performance and efficiency of variable-speed and single-speed dehumidifiers when operating at different test conditions. As shown in Figure 2, at the current 65 °F rating condition, the single-speed unit performed at 2.12 EF, and 25 percent less at the 55 °F rating condition, with a 1.45 EF. At the current 65 °F rating condition, the variable-speed unit performed at 2.66 EF, with a smaller decrease of 14 percent at the 55 °F rating condition, with a 2.29 EF.

Conversely, at the 80 °F rating condition, the single-speed unit performed at 2.75 EF, an increase of 24 percent relative to the current 65 °F rating condition. At the 80 °F rating condition, the variable-speed unit performed at 3.01 EF, a smaller increase of 13 percent relative to the current 65 °F rating condition.

DOE excluded time spent at outlier temperatures below 50 °F or above 80 °F. For each unit, DOE combined the remaining results from all three test conditions using weighting factors based on the percentage of dehumidifier operating hours spent within 5 °F of each test condition. The resulting weighting factors were 26 percent for the 55 °F test condition, 54 percent for the 65 °F test condition, and 20 percent for the 75 °F test condition.[13]

Although single-speed and variable-speed units may perform differently at individual test conditions either lower or higher than the current test condition, combining the results from all three test conditions into a single weighted average shows no significant difference in measured efficiency compared to the current single 65 °F rating condition, for both single-speed and variable-speed units. Using this weighted-average approach, the single-speed unit's weighted-average performance was 2.1 EF, a difference of only 2 percent from the performance measured at the current 65 °F rating condition. Similarly, the variable-speed unit's weighted-average performance was 2.6 EF, a difference of only 1 percent from the performance measured at the current 65 °F rating condition.

As discussed, DOE is proposing in this NOPR to allow the required test time to be 2 or 6 hours to give the option of reducing overall test burden when testing at the current single 65 °F rating condition. Including a half-hour stabilization period, this would result in a total test time of 2.5 hours for the current single test condition.

DOE is also considering specifying three test conditions. In considering two additional test conditions for portable dehumidifiers, DOE must also consider the additional test burden such a change would present to manufacturers. (42 U.S.C. 6293(b)(3)) DOE estimates that the current test procedure requires approximately 6.5 hours to conduct, representing a half-hour stabilization period followed by a 6-hour rating test period. If DOE were to proceed using the current test requirements (*i.e.,* a 6-hour rating test period), the time required for testing would increase from 6.5 hours to 21.5 hours. Each additional test condition would require at least 1 hour to change the conditions within the chamber, a half hour to allow the unit to stabilize within the chamber, and then 6 hours to conduct each additional test, totaling 15 additional test hours for the two additional test conditions described previously.

If DOE were to adopt a 2-hour test period, as proposed for the single test condition below, for each of the two additional test condition scenarios, the total time required for testing would increase to about 9.5 hours, adding at least 7 test hours to the manufacturer test burden (*i.e.,* 5 additional total hours for stabilization and testing, and 2 total

[13] As discussed above, while testing was conducted at a rating test condition of 80 °F, DOE considered the weighting of a potential future rating test condition of 75 °F, as suggested by commenters and to more evenly represent operating conditions between 50 °F and 80 °F.

hours to adjust the chamber conditions between tests). For comparison, the current test procedure requires 6.5 hours of testing, and the proposed revised test procedure requires 2.5 hours of testing, or 6.5 hours if the six-hour test is chosen.

However, in considering a three-condition test, performance at the lower temperatures during a 2-hour period could be less consistent with performance during a 6-hour period because defrost occurs. Thus, it is not clear when testing at 55 °F whether a 2-hour test is equivalent to a 6-hour test. If DOE chose to adopt a three-condition test and 2-hour test period with the exception of a 6-hour test at the 55 °F test condition, the total test burden would be 13.5 hours.

As indicated previously, DOE investigative testing suggests that a single temperature condition provides test results that are representative of an average period of use of a dehumidifier. As discussed, DOE is also considering testing of three possible temperature conditions although as discussed, investigative testing indicated no substantive improvement in representativeness over the current test procedure. Without an improvement in the representativeness of measuring dehumidifier performance at a range of temperatures, the increase in test burden associated with requiring multiple test conditions would not be justified.

DOE requests data regarding whether a three-test condition test is more representative of an average period of use for a dehumidifier and the applicability of a 2-hour test, or other reduced test length between 2 and 6 hours, to a three-condition test, specifically when testing at 55 °F.

DOE requests comment on maintaining a single-test condition approach for portable dehumidifiers, and further requests comment on potential benefits and burden associated with a three-test condition approach for all portable dehumidifiers.

c. Load-Based Test

Under the current test procedure, temperature and humidity conditions are held constant throughout the test (*i.e.,* a steady-state test). As such, the test unit operates at full capacity throughout the duration of the test.

In the July 2015 Final Rule, DOE considered a load-based test, in which the humidity level in the test chamber would be allowed to vary in response to the operation of the dehumidifier.[14] This, in turn, would allow the control system of the dehumidifier to respond to changing moisture levels in the room, as it would during real-world usage. As a result, a load-based test would induce cycling behavior in single-speed dehumidifiers or speed modulation in variable-speed dehumidifiers. 80 FR 45802, 45809. In the July 2015 Final Rule, DOE elected not to adopt a load-based test for the dehumidifier test procedure due to concerns about the potential increase in test burden. *Id.* at 80 FR 45810.

In the June 2021 TP RFI, DOE sought (1) feedback and data regarding any alternative test methods that may produce results that are more representative of variable-speed dehumidifier energy consumption, including, but not limited to, a load-based test approach; and (2) information about the nature and extent of the test burden associated with a load-based test for dehumidifiers. 86 FR 34640, 34642.

The Joint Commenters, MIAQ, and California IOUs supported the further investigation and development of a load-based test. (Joint Commenters, No. 5 at p. 1; MIAQ, No. 6 at p. 7; California IOUs, No. 7 at p. 2) The Joint Commenters stated that the current test procedure for dehumidifiers does not capture the impact of cycling losses, including moisture re-evaporation. They stated that, in dehumidifiers that continue to operate the fan after the compressor cycles off, some moisture that has been removed by the dehumidifier can be re-evaporated, which results in wasted energy. They cited a part-load performance test of two portable dehumidifiers conducted by the National Renewable Energy Laboratory in 2014.[15] They explained that in that study, the models operated the fan for 3 minutes after the compressor shut off; when compressor run times ranged from 3 to 6 minutes, 17–42 percent of the removed moisture was returned to the space. They further stated that the current test procedure measures the fan power consumed in fan-only mode, but it does not capture this additional efficiency impact from moisture re-evaporation. The Joint Commenters asserted that, for variable-speed units, load-based testing would: (1) evaluate the effectiveness of the unit's controls in adjusting compressor and fan speeds to optimize efficiency; and (2) enable variable-speed technology to compete on a fair basis, which the Joint Commenters asserted would likely increase the adoption of this feature. They further stated that, for single-speed units, load-based testing would capture the impact of cycling losses and wasted energy from re-evaporation. They therefore encouraged DOE to consider a load-based test, which would ensure that the test procedure reflects the real-world operation of dehumidifiers. (Joint Commenters, No. 5 at p. 1)

MIAQ supported a load-based test for both single-speed and variable-speed dehumidifier operation, as it asserted that such a test would provide the means to obtain true performance data of all dehumidifiers over a range of operating conditions, potentially resulting in a single number representing multiple test conditions, similar to the seasonal energy efficiency rating used in central air conditioners. (MIAQ, No. 6 at p. 7)

The California IOUs commented that there are new variable-speed dehumidifiers coming into the market that may require a revised test to account for part-load performance. (California IOUs, No. 7 at p. 2)

Aprilaire stated that it has considered the part-load test method previously described by DOE and asserted that this test would require a costly retrofit to facilities to implement and may be difficult to ensure consistent repeatability and reproducibility of the results. (Aprilaire, No. 4 at p. 1)

DOE agrees that a load-based test may better capture energy use resulting from either of two different circumstances. First, the rate of dehumidification could exceed the rate of moisture introduced to the room, leading to the compressor cycling off. Second, moisture could build up in the room, such as when the dehumidifier cycles off and only operates its fan to defrost the evaporator. Load-based testing may also be able to measure energy lost due to re-evaporation, as suggested by commenters. However, DOE continues to have the same concerns stated in the July 2015 Final Rule. First, a load-based test would significantly increase test burden. It is DOE's understanding that load-based testing is not possible to conduct in a psychrometer chamber designed to be compliant with requirements of appendix X1, without substantive changes to the control systems and potential changes to the reconditioning setup within the chamber. Second, as discussed below, due to the complexities of operating a test chamber in a load-based configuration, repeatability and reproducibility could decrease.

[14] In a load-based test, moisture would be added to the test chamber at a fixed rate (*i.e.,* a fixed load) throughout the duration of the test, simulating a real-world usage scenario.

[15] ''Measured Performance of Residential Dehumidifiers Under Cyclic Operation'' J. Winkler *et al.,* National Renewable Energy Laboratory, January 2014.

DOE continues to recognize the challenges associated with implementing load-based testing in the dehumidifier test procedure. As discussed in the recent room air conditioner test procedure final rule published by DOE in the **Federal Register** on March 29, 2021, and in the June 2021 TP RFI, DOE expects that a load-based test would reduce repeatability and reproducibility due to current limitations in current test chamber capabilities—namely, equipment is not designed for a load-based tests. 86 FR 16446, 16466 (March 29, 2021); 86 FR 34640, 34642 (June 30, 2021). Thus, although they may technically be capable of doing so, the controls and other systems are not capable of maintaining a specific load as needed, which would reduce the representativeness of the results and potentially be unduly burdensome. Additionally, the psychrometer chambers used to test dehumidifiers present additional challenges. The equipment and controls systems in these chambers are designed to maintain specified temperature and humidity conditions, not to add a steady amount of moisture in the same way that a calorimeter could.

Despite the challenges with load-based testing described previously, DOE conducted limited investigative testing of a load-based testing approach to assess differences in measured performance between a single-speed and variable-speed dehumidifier under such a test. At the time of testing, there was only one variable-speed dehumidifier model on the market. The variable-speed unit and the single-speed unit tested were from the same manufacturer, had similar designs, and had similar rated dehumidification capacities. Although the sample was limited, the data are informative, align with the theoretical limitations of variable-speed technology for dehumidifiers, and generally support the assertion from commenters that variable-speed is not a viable technology to improve efficiency.

DOE tested two dehumidifiers with comparable capacities from the same manufacturer, one with a variable-speed compressor and one with a single-speed compressor. DOE conducted multiple rounds of testing using different moisture introduction rates for each test. The moisture introduction rates represented 25 percent, 50 percent, 75 percent, and 100 percent of the full-load dehumidification capacity of each tested unit. The ''100-percent'' moisture introduction rate test is equivalent to the current appendix X1 test.

Figure 3 shows how the two units performed in dehumidification mode under each tested moisture load. As discussed previously, measured EF is presented instead of IEF to focus on the dehumidification mode efficiency; *i.e.,* the portion of IEF that would change due to a change to the test conditions.

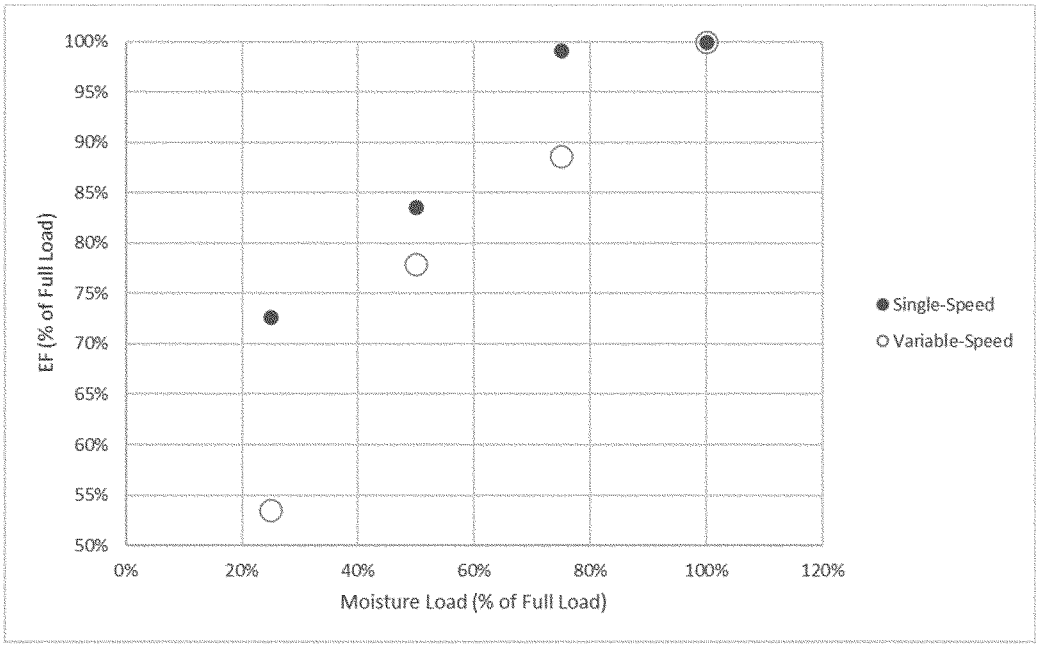


Figure 3: Measured EF vs. Moisture Load under Load-Based Testing Approach

As shown in Figure 3, at each reduced moisture load test, the single-speed unit performed more efficiently than the variable-speed unit, relative to each unit's measured efficiency at full load (*i.e.,* 100-percent load). For example, at the 75-percent load, the efficiency of the single-speed unit was 99 percent of full-load efficiency, whereas the efficiency of the variable-speed unit was 89 percent of full-load efficiency. At the 25-percent load, the efficiency of the single-speed unit was 73 percent of full-load efficiency, compared to only 54 percent for the variable-speed unit.

The relatively less efficient performance of the variable-speed unit at reduced loads runs counter to the general trends observed for other HVAC products such as room air conditioners, in which variable-speed units generally perform relatively more efficiently than single-speed units at reduced loads. The following paragraphs describe some notable observations made by DOE during testing; however, as discussed, DOE is unable to draw conclusions at this time as to why the variable-speed unit tested performed relatively less efficiently than the single-speed unit at reduced loads. During each load-based test, the single-speed unit cycled on and off, as expected, in response to the humidity level in the room being reduced and reaching the setpoint on the dehumidifier controls. DOE observed that the variable-speed unit also cycled on and off at the 25-percent moisture load condition. In addition to

cycling at the 25-percent load condition, the variable-speed unit also fluctuated between two different compressor speeds at the 75-percent moisture load condition. The reason for the compressor behavior at the 75-percent moisture load condition is unclear but may be related to the control scheme programmed by the manufacturer when the unit senses certain ambient or operating conditions.

DOE was unable to draw conclusions at this time as to why the tested variable-speed unit performed relatively less efficiently than the single-speed unit at reduced moisture loads. DOE would not expect either the cycling at the 25-percent condition or the fluctuation in compressor speeds at the 75-percent condition to result in relatively lower efficiency performance for the variable-speed unit relative to the single-speed unit, since the single-speed unit also exhibited cycling at each of the reduced moisture loads. DOE also has no information to suggest whether the observed trends in performance are unique to the variable-speed model tested, or whether the same trends in performance would be observed more generally for other variable-speed models. DOE notes, however, that the findings of this investigative testing would appear to support AHAM's comment in response to the June 2021 RFI that DOE should not assume that variable-speed compressors are a viable technology option for improving efficiency for dehumidifiers like they are for products such as room air conditioners, as discussed previously in section III.C.2.a of this document.

DOE's investigative testing does not support use of a load-based test to differentiate single-speed dehumidifiers from variable-speed dehumidifiers at this time. Therefore, DOE is not proposing a load-based test in this NOPR.

DOE requests comment on load-based testing for dehumidifiers, including (1) whether DOE's variable-speed dehumidifier test results are typical of the expected performance under a load-based test, (2) whether there are other aspects of performance beyond cycling that may have contributed to the performance observed during these tests, (3) the feasibility of conducting load-based tests in a typical lab setup, (4) the relative benefits and burdens of a load-based test, and (5) the tentative determination not to prescribe a load-based test in appendix X1.

d. Test Duration

Appendix X1 requires a test duration of 6 hours for the dehumidification mode test, after a 30-minute stabilization period. *See* Section 5.4 of appendix X1. DOE and AHAM's DH–1 working group have identified an opportunity to reduce this test duration, thereby reducing test burden. To identify a potential shorter test duration that could be considered, DOE conducted investigative testing on 13 portable dehumidifiers of varying capacities, one of which was variable-speed, at the 65 °F dry-bulb temperature, in accordance with appendix X1. DOE used the gravity drain condensate collection approach in appendix X1 and recorded the weight of the condensate collected every 30 seconds. *See* Section 3.1.1.4 of appendix X1. DOE was therefore able to calculate energy consumption and collected condensate at any of the 30-second intervals throughout the 6-hour test and did so at each hour of testing. Figure 4 and Figure 5 show the percent change in capacity and efficiency (IEF), respectively, at each hour relative to the results of the 6-hour test for the 13 tested units, as well as the average of all 13 units. (By definition, all data points would be plotted at 0-percent difference on the sixth hour).

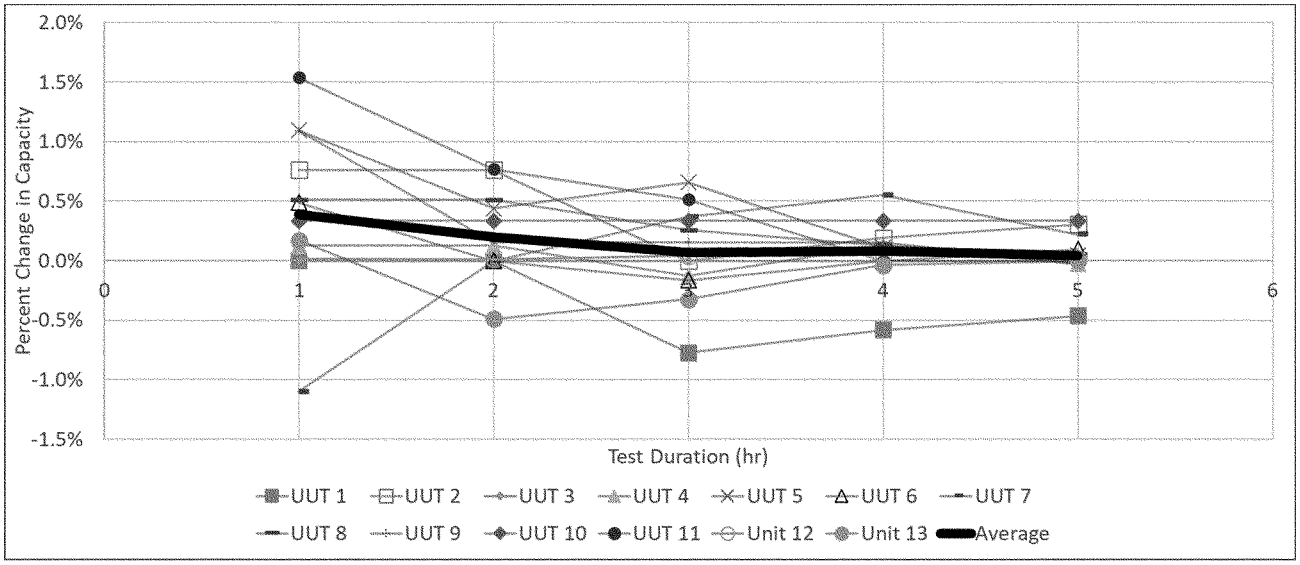


Figure 4: Percent Change in Capacity from 6-Hour Test Results

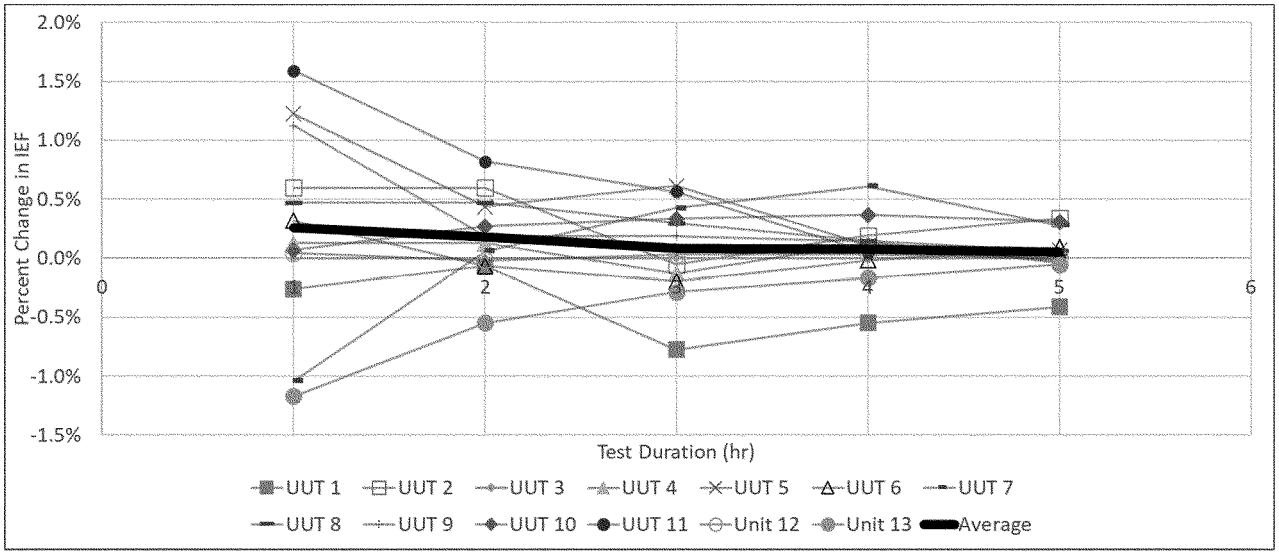


Figure 5: Percent Change in IEF from 6-Hour Test Results

As demonstrated in Figure 4 and Figure 5, capacity and efficiency vary only slightly from the 6-hour test results with a test duration reduced to 1 hour. Specifically, at 1 hour, capacity and efficiency differ from the 6-hour test results on average by 0.4 percent, and both data sets in combination show a minimum change of −1.2 percent and maximum change of 1.6 percent at the 1-hour point. At 2 hours, the percent change in capacity and efficiency for all 13 units is within a range of 1.4 percent. This investigative testing suggests that a 6-hour dehumidification mode test duration for portable dehumidifiers may be unnecessary, as the data show there is minimal difference in measured efficiency between the 2-hour and 6-hour test durations.

DOE also conducted investigative testing on three whole-home dehumidifier units at the 73 °F dry-bulb temperature, using the 6-hour dehumidification mode test duration as specified by appendix X1. *See* Section 5.4 of appendix X1. Each of the tested whole-home units operated the compressor continuously at steady state for the entirety of the 6-hour test duration, without any cycling due to frost accumulation. DOE also did not observe any cycling due to frost accumulation in the previously mentioned investigative testing of portable dehumidifiers at the 65 °F dry-bulb temperature. Thus, DOE does not expect cycling due to frost accumulation to occur for whole-home dehumidifiers or portable dehumidifiers at or above 65 °F dry-bulb temperature. Because both whole-home and portable units operate steadily at the rating conditions, one would expect that, like portable units, for whole-home units the 2-hour and 6-hour results also are equivalent within a very small percentage. A 2-hour test duration would therefore provide substantively equivalent measures of capacity and efficiency to a 6-hour test duration for whole-home units, but with a significantly shorter test. Based on this evaluation, DOE has tentatively determined that a 2-hour test duration is appropriate for both whole-home dehumidifiers and portable dehumidifiers and would provide representative results with minimized test burden. DOE also recognizes, however, that removing the requirement for a 6-hour test duration would require recertification for units previously certified under a test duration of 6 hours. Therefore, in this NOPR, DOE is proposing that the dehumidification mode test duration of either 2 or 6 hours for both portable and whole-home dehumidifiers.

As discussed previously, investigative testing indicates that a test length between 2 and 6 hours would likely be suitable to maintain test procedure repeatability and reproducibility. As such DOE is proposing an alternative test duration of 2 hours to provide consistent test procedure times, avoid unnecessary test burden, and avoid forcing manufacturers to retest. However, DOE continues to consider additional test durations of periods between 2 and 6 hours. DOE is aware that industry stakeholders are considering alternate test procedure lengths, including a 4-hour test with an extension to 6 hours should the unit enter defrost.

DOE requests comment on (1) the proposal to allow the dehumidification mode test duration to be 2 or 6 hours for both portable and whole-home dehumidifiers, (2) whether the proposed approach sufficiently represents capacity and efficiency for dehumidifiers, and (3) the efficacy of alternate test durations, including those being considered by industry stakeholders.

3. Psychrometer Setup

Appendix X1, through reference to Section 4 ''Instrumentation'' of ANSI/AHAM DH–1–2008, requires dehumidifiers with a single air intake to be monitored with an aspirating-type psychrometer [16] perpendicular to, and 1 foot in front of, the unit; and, in the case of multiple air intakes, to be monitored with a separate sampling tree. *See* Sections 3.1.1, 3.1.1.2, 3.1.1.3 of appendix X1.

In the July 2015 Final Rule, DOE considered whether certain psychrometer configuration issues, such as variable levels of residual heat from the psychrometer fan and variable air velocity influencing the accuracy of temperature sensors, were detrimental to test repeatability. 80 FR 45802, 45812–45813. As discussed in the July 2015 Final Rule, DOE was unable to determine whether any repeatability improvements are associated with adjusting the fan location in relation to

[16] In an aspirating-type psychrometer, a wet-bulb and a dry-bulb thermometer are mounted inside a case that also contains a fan. The fan draws air across both thermometers, and the resulting wet-bulb and dry-bulb temperatures are used to determine the percent relative humidity.

the dry-bulb and wet-bulb temperature sensors, or with tightening the air velocity requirements through the psychrometer. DOE also did not have sufficient data to quantify the burdens associated with such requirements. *Id.* at 80 FR 45813.

In the July 2015 Final Rule, DOE also considered a proposal to require sampling trees for testing all dehumidifiers, regardless of the number of air intakes, for consistency and repeatability. However, based on then-available data, DOE was unable to conclude that the use of a sampling tree would be more reliable than the psychrometer-only approach. 80 FR 45802, 45812–45813.

Since publication of the July 2015 Final Rule, DOE has received feedback from a testing laboratory that use of a sampling tree ducted to an aspirating psychrometer is a common configuration for testing of other refrigerant-based products, and that placing the psychrometer itself in front of the test unit may impede the instrument's ability to effectively monitor the inlet air conditions.

In the June 2021 TP RFI, DOE requested (1) data on the effect of residual heat from the psychrometer fan and the effects of psychrometer air velocity on temperature measurement repeatability when using a psychrometer, rather than a humidity sensor, under the current (appendix X1) test procedure; (2) data and other information on measures that can be employed to minimize any such effects when using a psychrometer, as well as information regarding the repeatability of measurements from tests using such measures; (3) comment on any potential test burden increases associated with additional requirements regarding psychrometer fan placement and orientation relative to the temperature sensors, and any burden associated with reducing the acceptable psychrometer air velocity range; and (4) comment on whether it would be appropriate to require, or to allow, sampling trees to be used with aspirating psychrometers regardless of the number of air intakes for a given model, including any data confirming repeatability and especially repeatability relative to using an aspirating psychrometer without a sampling tree. 86 FR 34640, 34642–34643.

In response to the June 2021 TP RFI, MIAQ stated that it uses a thin-film capacitive humidity measurement sensor that is accurate to within ±1 percent relative humidity, which eliminates the need for a psychrometer and its added heat. MIAQ asserted that psychrometers are inaccurate, difficult to maintain, and burdensome to set up. MIAQ also stated that sampling trees would not be required if inlet and outlet air flows are not allowed to affect the humidity sensor. According to MIAQ, the humidity sensor can be affected if the warm and dry dehumidifier exhaust is allowed to mix near the dehumidifier inlet where the humidity sensor is located, or if the mixing of the room air is not sufficient to disperse the warm and dry exhaust from the inlet. MIAQ recommended permitting devices other than an aspirating type psychrometer air sampler. They also recommended specifying that the humidity measuring device used must be able to achieve ±1 percent relative humidity, noting that the allowable range in dry bulb (±0.5 °F) and wet bulb (±0.3 °F) provide the same ±1 percent relative humidity range. (MIAQ, No. 6 at pp. 7–8)

AHAM commented that the current test procedure allows for two possible laboratory setups: a single-point measurement or a sampling tree. AHAM stated that allowing these different test setups may result in different test outcomes and thus lower reproducibility between test laboratories. AHAM did not have any specific recommendations on psychrometer setup. (AHAM, No. 3 at p. 3)

DOE conducted investigative testing to determine whether and to what extent there are differences between the relative humidity measurements obtained when using a relative humidity sensor instead of a psychrometer. To compare the measured relative humidity throughout the test period, DOE tested six portable dehumidifiers in accordance with appendix X1, each instrumented with two relative humidity sensors and an aspirating psychrometer, with all instrumentation placed 1 foot in front of the inlet grille. Figure 6 shows the results of this testing, indicating the average percentage difference in relative humidity as measured by the two relative humidity sensors compared to the relative humidity measured with the aspirating psychrometer.

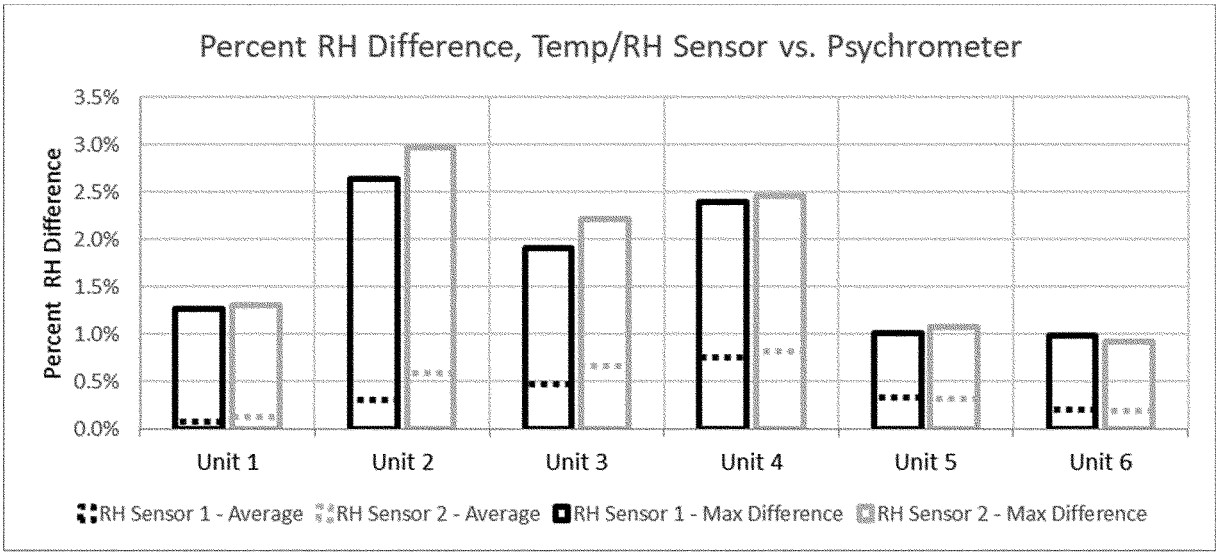


Figure 6: Average and Maximum Difference in Relative Humidity Measured by Humidity Sensors Compared to Aspirating Psychrometer Measurements

As shown in Figure 6, the average difference observed between relative humidity sensor and aspirating psychrometer measurements for a given test unit ranged from less than 0.1 percent to 0.8 percent relative humidity. The largest difference that DOE observed in testing (*i.e.,* from the smallest measured value for the aspirating psychrometer to the largest measured value for either of the relative humidity sensors) for any of the units was 3.0 percent relative humidity, and the average among all six test units of each unit's maximum difference was 1.8 percent relative humidity. DOE considers this level of variation to be comparable to the existing accuracy and tolerance requirements for relative humidity sensors in appendix X1 (*see* Sections 3.1.1.2 and 3.1.2.2.2 of appendix X1). DOE therefore tentatively concludes that the repeatability of the dehumidifier test procedure is similar regardless of whether a relative humidity sensor or aspirating psychrometer is used. Therefore, DOE proposes to maintain the options currently offered in appendix X1 regarding the permitted relative humidity measurement apparatuses.

The test procedure at appendix X1 does not currently permit the use of a sampling tree in conjunction with an aspirating psychrometer to measure relative humidity for portable dehumidifiers with a single air inlet. In the July 2015 Final Rule, DOE was unable to conclude whether using a psychrometer-only or using a psychrometer in conjunction with a sampling tree would produce the most repeatable results. 80 FR 45802. DOE required using the psychrometer-only approach in the July 2015 Final Rule to minimize test burden. However, DOE is aware that using a sampling tree with an aspirating psychrometer is standard practice for many test laboratories when conducing psychrometric testing. Although DOE is not aware of any data comparing relative humidity measurements using an aspirating psychrometer with and without a sampling tree, the widespread industry acceptance of sampling trees used with aspirating psychrometers and DOE's technical understanding of the validity of measurements obtained when using sampling trees suggest that allowing the use of sampling trees in appendix X1 would not substantively impact the repeatability or reproducibility of the test procedure, or the representativeness of the measured results. Additionally, allowing sampling trees would likely reduce the test burden for certain test laboratories that would otherwise be required to change their aspirating psychrometer configuration to remove the sampling tree and reposition the psychrometer within the test chamber. Therefore, when measuring relative humidity using an aspirating psychrometer for all portable and whole-home dehumidifiers with a single air inlet, DOE is proposing to permit the use of sampling trees in appendix X1.

DOE requests comment on the proposal to allow relative humidity measurements taken using an aspirating psychrometer with a sampling tree in appendix X1 for dehumidifiers with a single air inlet.

In addition to the proposal to allow sampling trees in conjunction with aspirated psychrometer testing, DOE is aware that industry stakeholders are considering shielding and positioning requirements for aspirated psychrometer construction and setup to improve the accuracy of the results. DOE believes that these requirements would improve the repeatability and reproducibility of the test procedure. Based on input from industry, DOE expects that there would be minimal test burden increase associated with these requirements, as these practices are already generally accepted by industry. Therefore, DOE proposes to require that the sensing elements within the psychrometer box be shielded or positioned to minimize radiation effects from the fan motor, that there be line of sight separation between any fans and sensing elements within the test fixture, and at least 3 feet of separation, along the path of airflow, between any fans and sensing elements within the test fixture.

DOE requests comment on the proposal to require that the psychrometer box contain shielding or be configured to minimize radiation effects on the sensing elements, that there be line of sight separation between any fans and sensing elements within the test fixture, and at least 3 feet of separation, along the path of airflow, between any fans and sensing elements within the test fixture.

4. Whole-Home Dehumidifiers

a. Air Velocity

In the July 2015 Final Rule, DOE established a test procedure for whole-home dehumidifiers in appendix X1. 80 FR 45802, 45810–45811. Whole-home dehumidifiers differ from portable dehumidifiers as they are installed in a ducted configuration in a home. The whole-home dehumidifier test procedure specifies a ducted test setup with instructions for measuring and maintaining the air flow through these ducts. *See* section 3.1.3 of appendix X1. Section 5.2 of AHAM DH–1–2017 requires that ''the air flow approaching the test unit shall be uniform in temperature, humidity and velocity. The air velocity shall not exceed 50 feet per minute (''ft/min'') (0.25 meters per second (''m/s'')) within 3 ft (0.91 m) of the dehumidifier with the unit not operating.''

MIAQ expressed concern with the air velocity requirements in section 5.2 of AHAM DH–1–2017. MIAQ agreed there is a need to properly mix the air during testing but stated that for the larger whole-home dehumidifiers, a maximum air velocity of 50 ft/min requires a test chamber of an excessive size. MIAQ suggested working with DOE to identify a higher velocity that can be used with larger units. (MIAQ, No. 6 at pp. 7–8)

As reflected in AHAM DH–1–2017, the 50 ft/min maximum air velocity requirement ensures that the test chamber is sufficiently equipped and sized to maintain uniform temperature, humidity, and velocity for the dehumidifier inlet air. However, when testing high-capacity portable and whole-home dehumidifiers, DOE understands that this requirement, in conjunction with the requirement that test chambers must exchange air within the chamber at a rate no less than two times the airflow of the dehumidifier under test, may represent a challenge. Because larger dehumidifiers have a significantly higher airflow than smaller portable dehumidifiers, they may require the use of test chambers that are significantly larger than a typical laboratory's. Commenters have suggested that this specification in AHAM DH–1–2017 may represent an undue burden on manufacturers of large-capacity portable dehumidifiers and whole-home dehumidifiers.

DOE is considering alternate air velocity specifications. However, DOE is not aware of any data that quantify the impact on repeatability and reproducibility of raising the maximum air velocity requirement to a less stringent level. Based on anecdotal evidence and information received from laboratory technicians, an increased air velocity when testing larger-capacity dehumidifiers in standard chambers (*i.e.,* above 50 ft/min) does not negatively impact the repeatability or reproducibility of the test procedure. Based on the previous information, DOE is considering raising the maximum air flow requirement by an amount appropriate to the increased air flow of the largest units on the market, *e.g.,* to 100 ft/min.

DOE requests comment regarding the maximum air velocity requirement generally, the current 50 ft/min

requirement as specified in AHAM DH–1–2017, and the consideration to raise the maximum air velocity within 3 ft of the dehumidifier with the unit not operating, when properly configuring the test chamber. Were DOE to obtain information or data indicating that a higher permitted air velocity would not negatively impact the measured results, DOE would consider adopting an increased air velocity requirement.

Aprilaire commented that appendix X1 currently lists a pitot traverse method of determining velocity pressures and ultimately airflow through reference to Section 7.3.1 of ANSI/Air Movement and Control Association (''AMCA'') 210–07. Aprilaire stated that there is a very limited number of test facilities that still use this technology. Aprilaire suggested that DOE adopt the alternative method of using airflow nozzles to measure airflow detailed in Section 7.3.2 of ANSI/AMCA 210–07. Aprilaire stated that most laboratories are using the nozzle method in ANSI/AMCA 210–07 for measuring airflow and that this method is listed by American Society of Heating, Refrigerating, and Air Conditioning Engineers (''ASHRAE'') Standard 37 as the method to use for HVAC Equipment. (Aprilaire, No. 4 at pp. 1–2)

DOE inquired with a number of laboratories and is aware that there is a limited number of test laboratories that use pitot-tube traverses when conducting testing in accordance with ANSI/AMCA 210–07 (*see* Sections 4.2.2, 4.3.1 and 7.3.1 of ANSI/AMCA 210–07), as referenced by appendix X1 for testing whole-home dehumidifiers. DOE is aware that test laboratories typically use the alternate calibrated nozzle approach detailed in Sections 4.2.3, 4.3.2 and 7.3.2 of ANSI/AMCA 210–07 when conducting testing in accordance with ANSI/AMCA 210–07 for products other than dehumidifiers, which is not currently permitted in appendix X1. Based on feedback from test laboratories and comments received in response to the June 2021 TP RFI, DOE understands that pitot-tube traverses are complex to fabricate and that measuring static pressure using them may require greater expertise, be more costly, and be more error-prone than the alternative calibrated nozzle approach. DOE has conducted limited investigative testing of two whole-home dehumidifiers to compare the IEF measured using pitot-tube traverses to the calibrated nozzle approach. The results show an average difference between the two approaches of 1 percent. Based on the industry-accepted standard, ANSI/AMCA 210–07, the understanding that the two approaches are substantively similar, and feedback from test laboratories that use of the calibrated nozzle approach can reduce the test burden as compared to use of the pitot-tube traverses, DOE is proposing to allow the calibrated nozzle approach in addition to the pitot-tube traverse approach in appendix X1 when testing whole-home dehumidifiers, in accordance with the requirements of Sections 4.2.3, 4.3.2, and 7.3.2 of ANSI/AMCA 210–07.

DOE requests comment on the proposal to allow calibrated nozzle testing according to the requirements of Sections 4.2.3, 4.3.2, and 7.3.2 of ANSI/AMCA 210–07 for whole-home dehumidifiers in appendix X1.

b. Ventilation Air

Appendix X1 requires capping and sealing any fresh-air inlet on a whole-home dehumidifier during testing. Section 3.1.3 of appendix X1. In the July 2015 Final Rule, DOE determined that, while sealing the fresh-air inlet on dehumidifiers designed to operate with the fresh-air intake open may negatively impact capacity and efficiency, those effects are not significant enough to warrant the added test burden of providing separate fresh-air inflow. 80 FR 45802, 45811. In the June 2021 TP RFI, DOE noted the lack of data regarding representative consumer use of fresh-air inlet ducts for whole-home dehumidifiers. 86 FR 34640, 34643. DOE subsequently requested (1) data about the prevalence of fresh-air inlet use among whole-home dehumidifier consumers, and (2) feedback on the test burden increases associated with adding another air stream in the testing configuration to account for the fresh-air inlet on those whole-home dehumidifiers equipped with such a feature. *Id.*

Aprilaire and MIAQ stated that capping the fresh-air intake should not appreciably impact the total airflow through the unit and subsequently should have little effect on the efficiency. (Aprilaire, No. 4 at p. 2; MIAQ, No. 6 at p. 9) Aprilaire further stated that alternatives such as requiring an alternate airflow would provide a serious and substantial burden and would require substantial retrofits to existing dehumidification test chambers. (Aprilaire, No. 4 at p. 2) MIAQ stated that nearly all whole-home dehumidifiers it offers include the option of a fresh-air inlet, and that its units are tested with this inlet subject to the same ESP as the dehumidifier's return air inlet. MIAQ asserted that developing a test procedure that requires the dehumidifier's return air inlet to be subject to one value of ESP and the fresh-air inlet to a different ESP would be an excessive burden that would provide little value. MIAQ suggested consideration of alternatives, for example, a third test condition for whole-home dehumidifiers at a higher temperature and an ESP of 0.2 in. w.c. to simulate a blending of return air and outside air at two different temperatures and ESPs. MIAQ added that another possible approach is to develop a single metric representing multiple test conditions, as provided in their comments, that includes a test condition or two representing a fresh-air inlet combined with return air from the dwelling. (MIAQ, No. 6 at p. 9)

DOE is not aware of publicly available data, nor has DOE received information from commenters, regarding the prevalence of fresh-air inlet use among whole-home dehumidifier consumers. Comments received on this issue are consistent with DOE's prior determination that the burden of adding an additional air stream in the testing configuration to account for fresh-air inlet on those whole-home dehumidifiers equipped with such a feature would outweigh the benefits. Doing so would substantively increase cost, require substantial retrofits to existing dehumidification test chambers, and provide little value. Therefore, DOE proposes to retain the requirement to cap and seal the fresh-air inlet during testing of a whole-home dehumidifier.

DOE requests comment on the tentative determination to continue to require capping and sealing any fresh-air inlet on a whole-home dehumidifier during testing in appendix X1.

c. External Static Pressure

The DOE test procedure at appendix X1 requires that the ESP, the difference in process air outlet static pressure minus the process air inlet static pressure, be 0.2 in. w.c. for the duration of the test when conducting whole-home dehumidifier testing. *See* section 3.1.2.2.3.1 of appendix X1.

MIAQ stated that whole-home dehumidifiers are typically integrated into the dwelling's HVAC system's ductwork. MIAQ stated that the unit could (1) draw air from the furnace/air handler's return and send dehumidified air back to the return (*i.e.,* return-return installation), or (2) draw from the furnace/air handler's supply and return dehumidified air to the same supply (*i.e.,* supply-supply installation). MIAQ stated that in either setup, the ESP experienced by the dehumidifier would be nearly 0 in. w.c. MIAQ stated that whole-home dehumidifiers could also draw from the furnace/air handler's

return and send the dehumidified air to the furnace/air handler's supply ductwork, in which case the ESP would be the same as that seen by the furnace/air handler's fan, which is typically 0.25 in. w.c. to 0.5 in. w.c. MIAQ further stated the dehumidifier could also receive a portion of its intake air from outside for the purpose of meeting ventilation requirements.

For whole-home dehumidifiers, MIAQ suggested that DOE adopt two product classes (75 pints/day or less and greater than 75 pints/day) and two test conditions (73 °F dry-bulb and 60 percent relative humidity for both test conditions, one at 0 in. w.c. of ESP and the other at 0.4 in. w.c. of ESP).

MIAQ stated that the first suggested test condition represents a unit ducted in a furnace return-return or supply-supply arrangement with 0 in. w.c. of ESP and the second suggested test condition represents a unit drawing air from the furnace's return air duct and/or outside air and supplying the air to the furnace's supply air duct with 0.4 in. w.c. of ESP. (MIAQ, No. 6 at pp. 4–6)

Regarding distinguishing between whole-home dehumidifiers based on capacity, MIAQ did not provide, and DOE does not have, information or data to indicate that such a distinction is warranted for the test procedure. If DOE proposes amendments to the energy conservation standards, DOE will consider whether to create additional whole-home dehumidifier product classes consistent with the authority at 42 U.S.C. 6295(q).

In this NOPR, DOE is not proposing to amend the test conditions and test setups for whole-home dehumidifiers, as suggested by MIAQ. MIAQ did not provide support regarding the representativeness of this setup. In addition, DOE previously considered and rejected it in a previous rulemaking based on a field study and other information. While DOE understands that installation configurations and environmental factors vary for whole-home dehumidifiers, DOE tentatively concludes that testing whole-home dehumidifiers twice, once with 0 in. w.c. ESP and once with 0.4 in. w.c. ESP, would not be sufficiently more representative as to justify the increased test burden. The 0.2 in. w.c. ESP specification for the existing single whole-home dehumidifier test was based on real-world operating data from a field study conducted in 2014.[17] This field study and manufacturer comments addressed in the supplemental notice of proposed rulemaking (''SNOPR'') during the last dehumidifier test procedure rulemaking (''February 2015 SNOPR'') supported that whole-home dehumidifiers are typically installed in configurations resulting in 0.2 in. w.c. ESP. 80 FR 5994 (Feb. 4, 2015). Manufacturer feedback discussed in the February 2015 SNOPR indicated that using an ESP of 0.5 in. w.c. would be an ''extreme and unrealistic condition for whole-home dehumidifiers'' and that whole-home dehumidifiers are typically installed at much lower ESP than 0.5 in. w.c. 80 FR 5994, 5997.

Adding additional whole-home dehumidifier tests would increase test burden on manufacturers by a minimum of 2 or 6 hours for each test. In addition to the increased test chamber time, each test with a new ESP would require additional time to adjust or refabricate duct installation setups between tests.

DOE is not proposing to add additional tests to the whole-home dehumidifier test procedure at appendix X1. DOE tentatively determined that the current test procedure sufficiently represents typical whole-home installation configurations and any marginal increase in representativeness from additional test conditions would not justify the substantial test burden increase associated with those additional tests.

DOE requests comment on maintaining a single test approach for whole-home dehumidifiers. DOE also requests comment on potential improvements in representativeness and the additional test burden associated with the testing whole-home dehumidifiers twice, once each with an external static pressure of 0 in. w.c. ESP and 0.4 in. w.c.

5. Network Functions

In the June 2021 TP RFI, DOE noted that many types of consumer products (*e.g.,* refrigerators, clothes dryers, room air conditioners) are now equipped with ''network functions,'' such as mobile alerts/messages, remote control, and energy information and demand response capabilities to support future smart grid interconnection. 86 FR 34640, 34643. DOE noted that certain manufacturers have also incorporated some of these features, such as WiFi capability, into dehumidifiers. *Id.* In a previously published RFI, DOE sought comment to better understand market trends and issues in the emerging market for products and equipment that incorporate smart technology to ensure that DOE did not inadvertently impede such innovation when setting efficiency standards. 83 FR 46886. (Sept. 17, 2018) In the June 2021 TP RFI, DOE requested (1) data on the prevalence of network functions in dehumidifiers currently on the market in the United States and (2) information on whether the current test procedures for dehumidifiers impede providing smart technology operations on dehumidifiers. 86 FR 34640, 34643.

In response to the June 2021 TP RFI, the Joint Commenters, MIAQ, and the California IOUs supported further investigation of network functions in dehumidifiers. (Joint Commenters, No. 5 at pp. 1–2; MIAQ, No. 6 at p. 8; California IOUs, No. 7 at p. 2) The Joint Commenters stated that, while units with network functions can provide benefits by facilitating integration with the smart grid, network functions may consume additional standby power in all operating modes. They further stated the test procedure should capture any power consumption associated with network functions to encourage manufacturers to provide network functions with low power consumption. (Joint Commenters, No. 5 at pp. 1–2)

MIAQ stated it is not aware of any product with significant residential market impact that uses network functions. MIAQ further stated that it is aware of commercial dehumidifiers that offer this technology and of efforts to develop this for the residential market. MIAQ stated that if network functions were integrated into dehumidification products, the method of test would need to be re-evaluated; if the units included faster response or predictive operation, there may be more time spent in a ''standby'' mode or more rapid cycling of the unit. (MIAQ, No. 6 at p. 8)

The California IOUs asserted that dehumidifiers are strong candidates for load shifting due to their typical operation based on humidity, rather than on consumer preferences. They indicated that network functions and load shifting are priorities in California and that dehumidifiers with network functions are already on the market. The California IOUs also commented that EPA has indicated an intent to include network functions in future revisions of the ENERGY STAR Criteria. (California IOUs, No. 7 at p. 2)

AHAM stated that enabling network functions results in a negligible increase in current draw when compared to the current draw of a dehumidifier's main function. AHAM additionally stated that the percentage of dehumidifiers with network functions (as per the ENERGY STAR definition) is 0.4 percent of total shipments. AHAM stated that further discussion on these aspects of the test procedure will take place on the AHAM DH–1 task force. (AHAM, No. 3 at p. 3)

[17] T. Burke, *et al.,* Whole-Home Dehumidifiers: Field-Monitoring Study, Lawrence Berkeley National Laboratory, Report No. LBNL–6777E (September 2014). Available at *https://www.osti.gov/servlets/purl/1164163.*

Based on testing and information from industry regarding network functions in consumer products, DOE expects that the power consumption attributable to network functions is expected to be on the order of 1 watt (''W'') or less. The impact on IEF of power consumption of network functions is expected to be no more than 1 percent, based on DOE's testing that indicated an average impact on IEF of less than 0.75 percent for the units in DOE's test sample. DOE is aware there are dehumidifiers on the market with varying implementations of network functions. However, DOE is not aware of any data available, nor did interested parties provide any data, regarding the consumer use of network functions. Without these data, DOE is unable to establish a representative test configuration to assess the energy consumption of network functions for dehumidifiers. Therefore, DOE proposes to specify that, if a dehumidifier has network functions, all network functions must be disabled throughout testing using means available to the end user pursuant to instructions provided in the product's user manual. DOE further proposes to specify that, if network functions cannot be disabled by the consumer or the manufacturer's user manual does not provide instruction for disabling the function, the energy consumption of the enabled network function must be included, as it is more representative than excluding the energy consumption associated with the network function.

DOE requests comment on the proposal to specify in appendix X1 that, for units with network functions, (1) the network functions 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; and (2) if network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network functions, then the unit must be tested with the network functions in the factory default configuration for the test period.

6. Removal of Appendix X

Appendix X to subpart B of 10 CFR part 430 is unnecessary for dehumidifiers manufactured on or after January 27, 2016. Use of appendix X1 to subpart B of 10 CFR part 430 is currently required for any representations of energy use or efficiency of portable and whole-home dehumidifiers, including demonstrating compliance with the currently applicable energy conservation standards. As discussed in this document, DOE is proposing to maintain the current appendix X1, with amendments. That updated version of appendix X1 would be used for the evaluation and issuance of any updated efficiency standards, and for determining compliance with those standards. Therefore, in this NOPR DOE proposes to remove appendix X to subpart B of 10 CFR part 430, along with all references to appendix X in 10 CFR parts 429 and 430.

DOE requested comment on its proposal to remove appendix X to subpart B of 10 CFR part 430 along with all references to appendix X in 10 CFR parts 429 and 430.

D. Reporting

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For dehumidifiers, the certification template reflects the general certification requirements at 10 CFR 429.12 and the product-specific requirements at 10 CFR 429.36.

The California IOUs suggested that DOE incorporate reporting of refrigerant type and charge quantity for dehumidifiers into the test procedure. They stated that this would not increase testing burden as this information is already being collected to comply with other industry test procedures and would be useful for compliance with new refrigerant regulations. (California IOUs, No. 7 at p. 3)

The collection of refrigerant type and charge quantity for dehumidifiers is not necessary for compliance or to support the DOE program. For this reason, DOE is not proposing to amend the product-specific certification requirements for dehumidifiers to require reporting of refrigerant type or charge quantity.

E. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for dehumidifiers by amending appendix X1 to incorporate the current version of the applicable industry standard, specify dehumidification mode rating test period options of 2 or 6 hours, permit the use of a sampling tree in conjunction with an aspirating psychrometer for a dehumidifier with a single process air intake grille, and specify requirements for testing dehumidifiers with network functions. If the network functions can be disabled by the end-user and instructions to disable are in the manual, test with those functions disabled; otherwise, test in the factory default setting. DOE has tentatively determined that these proposed amendments would not increase testing costs. As discussed in the following paragraphs, DOE has also tentatively determined that two proposals would likely reduce testing costs: shortening the test duration and permitting use of a sampling tree.

a. Reduced Test Period

DOE proposes to amend appendix X1 to specify dehumidification mode rating test period options of 2 or 6 hours for portable and whole-home dehumidifiers. As discussed in section III.B.3 of this document, DOE expects this proposal would decrease test cost for dehumidifier manufacturers due to reduced test chamber time, assuming they choose the 2-hour option. Reducing the test period by 4 hours would yield an estimated cost savings per test of $750.

DOE has initially determined that the proposed amendments would not affect the representations of dehumidifier energy efficiency/energy use, as discussed in section III.B.4 of this document. If DOE adopts the proposed amendments, DOE expects that manufacturers would be able to rely on data generated under the current test procedure. As such, retesting of dehumidifiers would not be required solely as a result of DOE's adoption of the proposed amendments to the test procedure. Recertification would also not be required as a result of this amendment: the proposal includes retaining the 6-hour option, meaning existing test data would continue to support certification.

DOE requests comment on the impact and associated costs of the proposal to specify dehumidification mode rating test period options of 2 or 6 hours for portable and whole-home dehumidifiers.

b. Sampling Tree

DOE proposes in appendix X1 to allow relative humidity measurements using an aspirating psychrometer with a sampling tree for dehumidifiers with a single air inlet. As discussed in section III.B.4 of this document, DOE expects this proposal would not substantively impact repeatability or reproducibility of the test procedure or the representativeness of the measured energy efficiency. The proposal, if made final, would not result in a change of the measured energy efficiency of any currently certified dehumidifiers because the proposed use of a sampling tree would be an alternate test set-up to the current test set-up. The proposal, if made final, would also likely reduce the test burden for certain test laboratories that would otherwise be required to

change their aspirating psychrometer configuration to remove the sampling tree and reposition the psychrometer within the test chamber. There is no cost attributable to this amendment.

DOE has tentatively determined that the proposed amendments would not impact the measured energy use or representations of dehumidifier energy efficiency/energy use. DOE has tentatively determined that manufacturers would be able to rely on data generated under the current test procedure if DOE adopts the proposed amendments. As such, DOE does not expect retesting of any dehumidifier would be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

DOE requests comment on the impact and associated costs of the proposal to allow relative humidity measurements to be made using an aspirating psychrometer with a sampling tree in appendix X1 for dehumidifiers with a single air inlet.

c. Other Amendments

DOE has tentatively determined that the proposed amendments to incorporate the updated version of the relevant industry testing standard and to provide additional direction regarding units with network functions would not change the measured energy efficiency as compared to the current test procedure and would not change the test costs. Based on review of AHAM DH–1–2017, DOE expects that the proposed test procedure for measuring IEF would not increase testing costs per unit compared to the current DOE test procedure. DOE also does not expect that the proposed direction to disable network functions during testing, if made final, would impact test cost or the measured energy efficiency, as network function does not represent a significant portion of the overall energy efficiency, as discussed previously.

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. 10 CFR part 430 subpart C, appendix A, section 8(c). If the industry standard does not meet EPCA statutory criteria for test procedures, DOE will, through the rulemaking process, adopt modifications to these standards.

The test procedures for dehumidifiers at part 430, subpart B, appendix X1 incorporates by reference AHAM DH–1–2017, ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301. Appendix X1 incorporates sections of (1) AHAM DH–1–2017 for definitions, instrumentation, and test procedure requirements, (2) ANSI/AMCA 210 to describe required instrumentation and measurements of ESP, pressure losses, and velocity pressures for refrigerant-desiccant whole-home dehumidifiers testing, (3) ANSI/ASHRAE 41.1 to determine the number and locations of temperature sensors within the ducts for refrigerant-desiccant whole-home dehumidifiers, and (4) IEC 62301 for requirements for inactive and off mode testing. The industry standards DOE proposes to incorporate by reference via amendments described in this proposed rule are discussed in further detail in section IV.M of this document.

DOE has tentatively determined that the proposed amendments in this proposed rule are not unduly burdensome. DOE requests comments on the benefits and burdens of the proposed updates and additions to industry test standards referenced in the test procedure for dehumidifiers.

F. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of that test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure and an individual manufacturer may experience undue hardship in meeting the deadline, EPCA provides an allowance for those manufacturers to petition DOE for an extension of the 180-day period. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 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 proposed 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 proposed 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 an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461

(Aug. 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: *www.energy.gov/gc/office-general-counsel.*

1. Description of Reasons Why Action Is Being Considered

The Energy Policy and Conservation Act, as amended (''EPCA'') [18] requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including dehumidifiers, 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)) DOE is publishing this NOPR in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

2. Objectives of, and Legal Basis for, Rule

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

EPCA requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including dehumidifiers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to 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 and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A))

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. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if 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 [19] and IEC Standard 62087 [20] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this NOPR in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of dehumidifiers, the Small Business Administration (''SBA'') considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. DOE used SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. These size standards and codes are established by the North American Industry Classification System (''NAICS'') and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of portable dehumidifiers is classified under NAICS 335210, ''Small Electrical Appliance Manufacturing,'' whereas the manufacturing of whole-home dehumidifiers is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer and 1,250 employees or fewer for an entity to be considered as a small business in these industry categories, respectively. For manufacturers of both portable and whole-home dehumidifiers, DOE used the higher (or more conservative) threshold of 1,500 employees or fewer.

DOE used its Compliance Certification Database (''CCD''),[21] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[22] and ENERGY STAR's Product Finder dataset [23] to create a list of companies that sell the products covered by this rulemaking in the United States. DOE consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs, and basic model numbers, to identify original equipment manufacturers (''OEMs'') of the products covered by this rulemaking. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [24]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this proposed rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE initially identified 15 OEMs of dehumidifiers for the U.S. market. DOE estimates that 12 are OEMs of portable dehumidifiers, two are OEMs of whole-home dehumidifiers, and one is an OEM of both portable and whole-home dehumidifiers. Of the 15 total OEMs identified, one qualifies as a ''small business'' and is not foreign-owned or operated.

4. Description and Estimate of Compliance Requirements

In this NOPR, DOE proposes to amend appendix X1 to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers, as follows:

(1) Incorporate by reference parts of AHAM DH–1–2017;

(2) Allow the rating test period in sections 4.1.1, 4.1.2, and 5.4 to be 2 or 6 hours;

(3) Add a provision in section 3.1.1.3 allowing for the use of a sampling tree in conjunction with an aspirating

[18] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[19] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[20] IEC 62087, Audio, video and related equipment—Methods of measurement for power consumption (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[21] DOE's CCD is available at *www.regulations.doe.gov/certification-data* (Last accessed January 24, 2022).

[22] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (Last accessed January 24, 2022).

[23] ENERGY STAR's Product Finder dataset is available at *www.energystar.gov/productfinder/product/certified-dehumidifiers/results* (Last accessed January 24, 2022).

[24] The Dun & Bradstreet Hoovers subscription login is available online at *app.dnbhoovers.com/.*

psychrometer for a dehumidifier with a single process air intake grille; and

(4) Add a requirement in section 3.1.2.3 that dehumidifiers with network functions shall be tested with the network functions in the ''off'' position if it can be disabled by the end-user; otherwise test in the factory default setting.

DOE has tentatively determined that these proposed amendments would not increase testing costs, and would likely reduce the testing costs, as discussed in the following paragraphs.

DOE proposes to amend appendix X1 to allow the dehumidification mode test duration to be 2 or 6 hours for both portable and whole-home dehumidifiers. DOE expects that this proposal would decrease testing costs and test burden for dehumidifier manufacturers due to reduced test chamber time, assuming they choose the 2-hour option. Considering a reduction of the test period by 4 hours, if the option is taken, and the subsequent time for test setup and stabilization, the estimated cost savings per test would be $750. Additionally, DOE has initially determined that the proposed amendments would not affect the representations of dehumidifier energy efficiency/energy use. If DOE adopts the proposed amendments, DOE expects that manufacturers would be able to rely on data generated under the current test procedure should the proposed amendments be finalized. Therefore, retesting would not be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

DOE proposes to allow relative humidity measurements to be made using an aspirating psychrometer with a sampling tree in appendix X1 for dehumidifiers with a single air inlet. DOE expects this proposal would not substantively impact repeatability or reproducibility of the test procedure and would likely reduce the test burden for certain test labs that would otherwise be required to change their aspirating psychrometer configuration to remove the sampling tree and reposition the psychrometer within the test chamber. There is no cost attributable to this amendment. DOE has tentatively determined that the proposed amendments would not impact the representations of dehumidifier energy efficiency/energy use, and that manufacturers would be able to rely on data generated under the current test procedure if DOE adopts the proposed amendments. As such, DOE does not expect retesting of any dehumidifier would be required solely due to DOE's adoption of the proposed amendments to the test procedure.

DOE does not anticipate the proposed test procedure amendments to result in increased testing costs for manufacturers, including small manufacturers. Thus, DOE tentatively concludes that the proposed rule would not have a significant impact on a substantial number of small entities.

DOE requests comment on its initial conclusion that the NOPR would not have a significant impact on a substantial number of small entities.

5. Identification of Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered in this action.

6. A Description of Significant Alternatives to the Rule

DOE considered alternative test methods and modifications to the test procedure for portable and whole-home dehumidifiers, and the Department has initially determined that there are no better alternatives than the modifications and test procedures proposed in this Notice, in terms of both meeting the agency's objectives and reducing burden. As previously discussed, DOE expects that these proposed amendments would not increase testing costs and would likely reduce the testing costs for dehumidifier manufacturers. Specifically, DOE proposes to allow test duration to be 2 or 6 hours for the dehumidification mode test, thereby reducing test burden, assuming they choose the 2-hour option.

Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of dehumidifiers 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 dehumidifiers. (*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 proposing to amend the certification or reporting requirements for dehumidifiers in this NOPR.

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

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result 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 *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed 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 proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would 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 proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of dehumidifiers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

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

The proposed modifications to the test procedure for dehumidifiers in appendix X1 would incorporate testing methods contained in certain sections of the following commercial standards: AHAM DH–1–2017, ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301. DOE has previously evaluated three of these standards (ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301) and was unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review. DOE consulted with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, and they did not object to the use of those standards. 80 FR 45801, 45823.

DOE has evaluated AHAM DH–1–2017 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 will consult with both the Attorney General and the Chairman of the FTC concerning the impact of AHAM DH–1–2017 on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference in appendix X1 the test standard published by AHAM, titled ''AHAM DH–1–2017.'' AHAM DH–1–2017 is an industry-accepted test procedure that measures the capacity and energy input of portable dehumidifiers under specified test conditions. AHAM DH–1–2017 includes provisions for testing dehumidifier energy use in off-cycle, inactive, and off modes, and for including energy consumption in those modes in efficiency calculations. Appendix X1 references sections of AHAM DH–1–2017 for definitions, instrumentation, and test procedure requirements.

Copies of AHAM DH–1–2017 may be purchased from The Association of Home Appliance Manufacturers at 1111 19th Street NW, Suite 402, Washington, DC 20036, or by going to *www.aham.org/ht/d/Store/.*

In this NOPR, DOE also proposes to maintain the incorporation by reference to the ANSI and AMCA test standard ANSI/AMCA 210, titled ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating,'' (ANSI Approved). ANSI/AMCA 210 is an industry-accepted test procedure that defines uniform methods for conducting laboratory tests on housed fans to determine airflow rate, pressure, power and efficiency, at a given speed of rotation. Appendix X1 references ANSI/AMCA 210 to describe required instrumentation required and measurements of ESP, pressure losses, and velocity pressures for refrigerant-desiccant whole-home dehumidifiers testing.

Copies of ANSI/AMCA 210 can be obtained from the Air Movement and Control Association International, Inc., at AMCA International, 30 West University Drive, Arlington Heights, IL 60004, or by going to *www.amca.org.*

In this NOPR, DOE also proposes to maintain the incorporation by reference to the ANSI and ASHRAE test standard ANSI/ASHRAE 41.1, titled ''Standard Method for Temperature Measurement,'' (ANSI Approved). ANSI/ASHRAE 41.1 is an industry-accepted standard that describes temperature measurement methods intended for use in heating, refrigerating, and air conditioning equipment and components. Appendix X1 references ANSI/ASHRAE 41.1 to determine the number and locations of temperature sensors within the ducts for refrigerant-desiccant whole-home dehumidifiers.

Copies of ANSI/ASHRAE 41.1 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., at 1791 Tullie Circle NE, Atlanta, GA 30329, or by going to *www.ashrae.org.*

In this NOPR, DOE also proposes to maintain the incorporation by reference to the IEC test standard IEC 62301, titled ''Household electrical appliances—Measurement of standby power, Edition 2.0, 2011–01.'' IEC 62301 specifies methods of measurement of electrical power consumption in standby mode(s) and other low power modes, such as off mode and network mode, as applicable. Appendix X1 references sections of IEC 62301 for requirements for inactive and off mode testing.

Copies of IEC Standard 62301 can be obtained from the International Electrotechnical Commission at 3 rue de Varembé, P.O. Box 131, CH–1211, Geneva 20, Switzerland, or by going to *webstore.iec.ch/* and *www.webstore.ansi.org.*

The Director of the Federal Register previously approved ANSI/ASHRAE 41.1, ANSI/AMCA 210, and IEC 62301 (Edition 2.0, 2011–01) for incorporation by reference in the locations in which they appear in this proposed rule's regulatory text for 10 CFR part 430.

V. Public Participation

A. Participation in the Webinar

The time and date the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=24&action=viewcurrent.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rule, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in

accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of this proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this document.[25] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

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

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

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

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email to *Dehumidifier2019TP0026@ee.doe.gov;* two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket,

[25] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on (1) its preliminary determination that the explicit exclusions from the definition of ''dehumidifier'' sufficiently distinguish dehumidifiers from consumer products that provide cooling by removing both sensible and latent heat, and (2) whether there are products on the market that are not explicitly excluded from the ''dehumidifier'' definition but should be.

(2) DOE requests comment on the proposed amended definitions for portable dehumidifier and whole-home dehumidifier.

(3) DOE requests comment on the proposal to incorporate AHAM DH–1–2017 by reference. DOE requests comment on the proposal not to change specifying ambient conditions based on wet-bulb temperature, as currently specified, as opposed to (or in addition to) dewpoint temperature.

(4) DOE requests information and data regarding any efficiency and performance benefits associated with variable-speed dehumidifiers, both generally and relative to those with single-speed dehumidifiers.

(5) DOE requests comment on maintaining a single-test condition approach for portable dehumidifiers, and further requests comment on potential benefits and burden associated with a three-test condition approach for all portable dehumidifiers.

(6) DOE requests comment on load-based testing for dehumidifiers, including (1) whether DOE's variable-speed dehumidifier test results are typical of the expected performance under a load-based test, (2) whether there are other aspects of performance beyond cycling that may have contributed to the performance observed during these tests, (3) the feasibility of conducting load-based tests in a typical lab setup, (4) the relative benefits and burdens of a load-based test, and (5) the tentative determination not to prescribe a load-based test in appendix X1.

(7) DOE requests comment on (1) the proposal to allow the dehumidification mode test duration to be 2 or 6 hours for both portable and whole-home dehumidifiers, (2) whether the proposed approach sufficiently represents capacity and efficiency for dehumidifiers, and (3) the efficacy of alternate test durations, including those being considered by industry stakeholders.

(8) DOE requests comment on the proposal to allow relative humidity measurements taken using an aspirating psychrometer with a sampling tree in appendix X1 for dehumidifiers with a single air inlet.

(9) DOE requests comment on the proposal to require that the psychrometer box be shielded or positioned to minimize radiation effects on the sensing elements, that there be line of sight separation between any fans and sensing elements within the test fixture, and at least 3 feet of separation, along the path of airflow, between any fans and sensing elements within the test fixture.

(10) DOE requests comment regarding the maximum air velocity requirement generally, the current 50 ft/min requirement as specified in AHAM DH–1–2017, and the consideration to raise the maximum air velocity within 3 ft of the dehumidifier with the unit not operating, when properly configuring the test chamber. Were DOE to obtain information or data indicating that a higher permitted air velocity would not negatively impact the measured results, DOE would consider adopting an increased air velocity requirement.

(11) DOE requests comment on the proposal to allow calibrated nozzle testing according to the requirements of Section 7.3.2 of ANSI/AMCA 210–07 for whole-home dehumidifiers in appendix X1.

(12) DOE requests comment on the tentative determination to continue to require capping and sealing any fresh-air inlet on a whole-home dehumidifier during testing in appendix X1.

(13) DOE requests comment on maintaining a single test approach for whole-home dehumidifiers. DOE also requests comment on potential improvements in representativeness and the additional test burden associated with the testing whole-home dehumidifiers twice, once each with an external static pressure of 0 in. w.c. ESP and 0.4 in. w.c.

(14) DOE requests comment on the proposal to specify in appendix X1 that, for units with network functions, (1) the network functions 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; and (2) if network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network functions, then the unit must be tested with the network functions in the factory default configuration for the test period.

(15) DOE requests comment on the impact and associated costs of the proposal to specify dehumidification mode rating test period options of 2 or 6 hours for portable and whole-home dehumidifiers.

(16) DOE requests comment on the impact and associated costs of the proposal to allow relative humidity measurements to be made using an aspirating psychrometer with a sampling tree in appendix X1 for dehumidifiers with a single air inlet.

(17) DOE has tentatively determined that the proposed amendments in this notice are not unduly burdensome. DOE requests comments on the benefits and burdens of the proposed updates and additions to industry test standards incorporated in the test procedure for dehumidifiers.

(18) DOE requests comment on its initial conclusion that the NOPR would not have a significant impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 27, 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 31, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 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 429.36 is amended by revising paragraph (b)(2) to read as follows:

§ 429.36 Dehumidifiers.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), include in each certification report the following product-specific information:

(i) The integrated energy factor in liters per kilowatt-hour (liters/kWh), capacity in pints per day; and

(ii) For whole-home dehumidifiers, case volume in cubic feet.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by revising the definitions of ''Portable dehumidifier'' and ''Whole-home dehumidifier'' to read as follows:

§ 430.2 Definitions.

* * * * *

Portable dehumidifier means a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates within the dehumidified space without the attachment of additional ducting, although means may be provided for optional duct attachment.

* * * * *

Whole-home dehumidifier means a dehumidifier that, in accordance with any manufacturer instructions available to a consumer, operates with ducting to deliver return process air to its inlet and to supply dehumidified process air from its outlet to one or more locations in the dehumidified space.

■ 5. Section 430.3 is amended by:

■ a. Revising paragraph (i)(1);

■ b. Removing paragraph (m)(2);

■ c. Redesignating paragraphs (m)(3) and (4) as paragraphs (m)(2) and (3), respectively; and

■ d. Revising paragraph (o)(6) by removing the wording ''X, '' in the sentence.

The revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(i) * * *

(1) AHAM DH–1–2017 (''AHAM DH–1''), Dehumidifiers, IBR approved for appendix X1 to subpart B.

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(z) *Dehumidifiers.* (1) Determine the capacity, expressed in pints/day, according to section 5.2 of appendix X1 to this subpart.

(2) Determine the integrated energy factor, expressed in L/kWh, according to section 5.4 of appendix X1 to this subpart.

(3) Determine the case volume, expressed in cubic feet, for whole-home dehumidifiers in accordance with section 5.7 of appendix X1 of this subpart.

* * * * *

Appendix X [Removed and Reserved]

■ 7. Appendix X to subpart B of part 430 is removed and reserved.

■ 8. Appendix X1 to subpart B of part 430 is amended by:

■ a. Revising the introductory Note;

■ b. Adding section 0;

■ c. Revising sections 3.1.1, 3.1.1.2, 3.1.1.3, 3.1.2, 3.1.2.2.3.1, 3.1.2.2.3.2, 3.1.2.3, 3.2.2.1, 4.1.1, 4.1.2, 4.2 and 4.3;

■ d. Removing sections 2.1, 2.2, 2.3, 2.9, 4.3.1 and 4.3.2; and

■ e. Revising section 5.4.

The revisions and additions read as follows:

Appendix X1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: After [date 180 days following publication of final rule], any representations made with respect to the energy efficiency of a dehumidifier must be made in accordance with the results of testing pursuant to this appendix. Manufacturers conducting tests of a dehumidifier prior to [date 180 days following publication of final rule], must conduct such test in accordance with either this appendix or the previous version of this appendix as it appeared in the Code of Federal Regulations on January 1, 2021. Any representations made with respect to the energy efficiency of such dehumidifier must be in accordance with whichever version is selected. Given that after [date 180 days following publication of final rule] representations with respect to the energy efficiency of dehumidifiers must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

If there is a conflict between the language of the referenced industry standard and the language of this appendix, the language of this appendix takes precedence. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the incorporation will be published in the **Federal Register**.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for AHAM DH–1–2017, ANSI/AMCA 210, ANSI/ASHRAE 41.1, and IEC 62301; however, only enumerated provisions of those documents are applicable to this appendix, as follows: 0.1 AHAM DH–1–2017:

(a) Section 3 ''Definitions,'' as specified in section 3.1.1 of this appendix; and

(b) Section 4 ''Instrumentation,'' as specified in section 3.1.1 of this appendix; and

(c) Section 4.1 ''Temperature Measuring Instruments,'' as specified in section 3.1.1.2 of this appendix; and

(d) Section 4.2 ''Psychrometric Instruments'' as specified in section 3.1.1.3 of this appendix; and

(e) Section 4.3 ''Relative Humidity Instruments'' as specified in section 3.1.1.3 of this appendix; and

(f) Section 5 ''Test Procedure,'' as specified in section 3.1.1 of this appendix; and

(g) Section 8.3 ''Standard Test Voltage,'' as specified in section 3.2.2.1 of this appendix; and

(h) Section 8 ''Capacity Test,'' as specified in sections 4.1.1 and 4.1.2 of this appendix; and

(i) Section 8.7 ''Calculation of Test Results,'' as specified in section 4.1.2 of this appendix; and

(j) Section 9 ''Energy Consumption,'' as specified in sections 4.1.1 and 4.1.2 of this appendix.

0.2 ANSI/AMCA 210:

(a) Section 5.2.1.6 ''Airflow straightener,'' as specified in section 3.1.2.1 of this appendix; and

(b) Figure 6A ''Flow Straightener—Cell Type,'' as specified in section 3.1.2.1 of this appendix; and

(c) Section 4.2.2 ''Pitot-static tube,'' as specified in section 3.1.2.2.3.1 of this appendix; and

(d) Section 4.2.3 ''Static pressure tap,'' as specified in section 3.1.2.2.3.1 of this appendix; and

(e) Section 4.3.1 ''Pitot Traverse,'' as specified in section 3.1.2.2.3.1 of this appendix; and

(f) Section 4.3.2 ''Flow nozzle,'' as specified in section 3.1.2.2.3.1 of this appendix; and

(g) Section 7.5.2 ''Pressure Losses,'' as specified in section 3.1.2.2.3.1 of this appendix; and

(h) Section 7.3.1 ''Velocity Traverse,'' as specified in section 3.1.2.2.3.2 of this appendix; and

(i) Section 7.3.2 ''Nozzle,'' as specified in section 3.1.2.2.3.2 of this appendix; and

(j) Section 7.3 ''Fan airflow rate at test conditions,'' as specified in section 5.6 of this appendix.

0.3 ANSI/ASHRAE 41.1:

(a) Section 5.3.5 ''Centers of Segments—Grids,'' in section 3.1.2.2.1 of this appendix.

(b) [Reserved]

0.4 IEC 62301:

(a) Section 5.2 ''Preparation of product,'' in section 3.2.1 of this appendix; and

(b) Section 4.3.2 ''Supply voltage waveform,'' in section 3.2.2.2 of this appendix; and

(c) Section 4.4 ''Power measuring instruments,'' in section 3.2.3 of this appendix; and

(d) Section 4.2 ''Test room,'' in section 3.2.4 of this appendix; and

(e) Section 5.3.2 ''Sampling method,'' Note 1, in section 4.3 of this appendix; and

(f) Section 5.3.2 ''Sampling method,'' in section 4.3 of this appendix.

* * * * *

3.1 * * *

3.1.1 *Portable dehumidifiers and whole-home dehumidifiers other than refrigerant-desiccant dehumidifiers.* The test apparatus and instructions for testing in dehumidification mode and off-cycle mode must conform to the requirements specified in Section 3, ''Definitions,'' Section 4, ''Instrumentation,'' and Section 5, ''Test Set-Up,'' of AHAM DH–1, with the following exceptions. If a product is able to operate as either a portable or whole-home dehumidifier by means of removal or installation of an optional ducting kit, in accordance with any manufacturer instructions available to a consumer, test and rate both configurations.

* * * * *

3.1.1.2 *Relative humidity instrumentation.* A relative humidity sensor with an accuracy within 1 percent relative humidity may be used instead of an aspirating psychrometer. When using a relative humidity sensor for testing, disregard the wet-bulb test tolerances in Table I of AHAM DH–1. Instead, the average relative humidity over the test period must be within 2 percent of the relative humidity setpoint, and all individual relative humidity readings must be within 5 percent of the relative humidity setpoint. In addition, use a dry-bulb temperature sensor that meets the accuracy as required in Section 4.1 of AHAM DH–1.

3.1.1.3 *Instrumentation placement.* Place the aspirating psychrometer, sampling tree that is connected to a psychrometer using the shortest length of insulated ducting necessary, or relative humidity and dry-bulb temperature sensors, perpendicular to, and 1 ft. in front of, the center of the process air intake grille. When using an aspirating psychrometer, either shield the sensing elements or position them within the psychrometer box to minimize radiation effects from the fan motor. Ensure that there is line of sight separation between any fans and sensing elements within the test fixture and at least 3 feet of separation, along the path of airflow, between any fans and sensing elements within the test fixture. When using an aspirating psychrometer when testing a unit that has multiple process air intake grille(s), place a separate sampling tree perpendicular to, and 1 ft. in front of, the center of the single or each process air intake grille, with the samples combined and connected to a single psychrometer using the shortest length of insulated ducting necessary. During each test, use the psychrometer to monitor inlet conditions of only one unit under test. When using relative humidity and dry-bulb temperature sensors when testing a unit that has multiple process air intake grilles, place a relative humidity sensor and dry-bulb temperature sensor perpendicular to, and 1 ft. in front of, the center of each process air intake grille.

* * * * *

3.1.2 *Refrigerant-desiccant dehumidifiers.* The test apparatus and instructions for testing refrigerant-desiccant dehumidifiers in dehumidification mode must conform to the requirements specified in Section 3, ''Definitions,'' Section 4, ''Instrumentation,'' and Section 5, ''Test Set-Up,'' of AHAM DH–1, except as follows.

* * * * *

3.1.2.2.3.1 *External static pressure.* Measure static pressures in each duct using pitot-static tube traverses, a flow nozzle or a bank of flow nozzles. For pitot-static tube traverses, conform to the specifications in Section 4.3.1, ''Pitot Traverse,'' of ANSI/AMCA 210 and Section 4.2.2, ''Pitot-Static Tube,'' of ANSI/AMCA 210, except use only two intersecting and perpendicular rows of pitot-static tube traverses . For a flow nozzle or bank of flow nozzles, conform to the specifications in Section 4.3.2, ''Flow nozzle,'' of ANSI/AMCA 210 and Section 4.2.3, ''Static pressure tap'' of ANSI/AMCA 210. Record the static pressure within the test duct as follows. When using pitot-static tube traverses, record the pressure as measured at the pressure tap in the manifold of the traverses that averages the individual static pressures at each pitot-static tube. When using a flow nozzle or bank of nozzles, record the pressure or in accordance with Section 4.2.3.2, ''Averaging,'' of ANSI/AMCA 210 . Calculate duct pressure losses between the unit under test and the plane of each static pressure measurement in accordance with Section 7.5.2, ''Pressure Losses,'' of ANSI/AMCA 210. The external static pressure is the difference between the measured inlet and outlet static pressure measurements, minus the sum of the inlet and outlet duct pressure losses. For any port with no duct attached, use a static pressure of 0.00 in. w.c. with no duct pressure loss in the calculation of external static pressure. During dehumidification mode testing, the external static pressure must equal 0.20 in. w.c. ± 0.02 in. w.c.

3.1.2.2.3.2 *Velocity pressure.* Measure velocity pressures using the same pitot traverses or nozzles as used for measuring external static pressure, which are specified in section 3.1.2.2.3.1 of this appendix. When using pitot-static tube traverses, determine velocity pressures at each pitot-static tube in a traverse as the difference between the pressure at the impact pressure tap and the pressure at the static pressure tap and calculate volumetric flow rates in each duct in accordance with Section 7.3.1, ''Velocity Traverse,'' of ANSI/AMCA 210. When using a flow nozzle or a bank of flow nozzles, calculate the volumetric flow rates in each duct in accordance with Section 7.3.2, ''Nozzle,'' of ANSI/AMCA 210.

* * * * *

3.1.2.3 *Control settings.* If the dehumidifier has a control setting for continuous operation in dehumidification mode, select that control setting. Otherwise, set the controls to the lowest available relative humidity level, and if the dehumidifier has a user-adjustable fan speed, select the maximum fan speed setting. *Do not use any external controls for the dehumidifier settings.* If the dehumidifier has network functions, the network functions can be disabled by the end-user, and the product's user manual provides instructions on how to do so, disable the network functions throughout testing. If network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network functions, test the unit with the network functions in the factory default configuration for the test period.

* * * * *

3.2.2 * * *

3.2.2.1 *Electrical supply.* For the inactive mode and off mode testing, maintain the electrical supply voltage and frequency indicated in Section 8.3, ''Standard Test Voltage,'' of AHAM DH–1. The electrical supply frequency shall be maintained ±1 percent.

* * * * *

4.1 * * *

4.1.1 *Portable dehumidifiers and whole-home dehumidifiers other than refrigerant-desiccant dehumidifiers.* Measure the energy consumption in dehumidification mode, EDM, in kilowatt-hours (kWh), the average percent relative humidity, Ht, either as measured using a relative humidity sensor or using the tables provided below when using an aspirating psychrometer, and the product capacity, Ct, in pints per day (pints/day), in accordance with the test requirements specified in Section 8, ''Capacity Test,'' and Section 9, ''Energy Consumption,'' respectively, of AHAM DH–1, with two exceptions. First, the rating test period must be 2 or 6 hours. Second, maintain the standard test conditions as shown in Table 1.

TABLE 1—STANDARD TEST CONDITIONS FOR DEHUMIDIFIER TESTING

Configuration	Dry-bulb temperature (°F)	Aspirating psychrometer wet-bulb temperature (°F)	Relative humidity sensor relative humidity (%)
Portable dehumidifiers	65 ± 2.0	56.6 ± 1.0	60 ± 2
Whole-home dehumidifiers	73 ± 2.0	63.6 ± 1.0	60 ± 2

When using relative humidity and dry-bulb temperature sensors, for dehumidifiers with multiple process air intake grilles, average the measured relative humidities and average the measured dry-bulb temperatures to determine the overall intake air conditions.

* * * * *

4.1.2 *Refrigerant-desiccant dehumidifiers.* Establish the testing conditions set forth in section 3.1.2 of this appendix. Measure the energy consumption, EDM, in kWh, in accordance with the test requirements specified in Section 8, ''Capacity Test,'' and Section 9, ''Energy Consumption,'' respectively, of AHAM DH–1, with the following exceptions:

(1) Each measurement of the temperature and relative humidity of the air entering the process air inlet duct and the reactivation air inlet must be within 73 °F ± 2.0 °F dry-bulb temperature and 60 percent ± 5 percent relative humidity, and the arithmetic average of the inlet test conditions over the test period shall be within 73 °F ± 0.5 °F dry-bulb temperature and 60 percent ± 2 percent relative humidity;

(2) Disregard the instructions for psychrometer placement;

(3) Record dry-bulb temperatures, relative humidities, static pressures, velocity pressures in each duct, volumetric air flow rates, and the number of measurements in the test period;

(4) Disregard the requirement to weigh the condensate collected during the test; and

(5) The rating test period must be 2 or 6 hours. To perform the calculations in Section 9.4, ''Calculation of Test Results,'' of AHAM DH–1:

(i) Replace ''Condensate collected (lb)'' and ''mlb'', with the weight of condensate removed, W, as calculated in section 5.6 of this appendix; and

(ii) Use the recorded relative humidities, not the tables in section 4.1.1 of this appendix, to determine average relative humidity.

4.2 *Off-cycle mode.* Follow requirements for test measurement in off-cycle mode of operation in accordance with Section 9.3.2 of AHAM DH–1.

4.3 *Inactive and off mode.* Follow requirements for test measurement in inactive and off modes of operation in accordance with Section 9.3.1 of AHAM DH–1.

* * * * *

5. * * *

5.4 *Integrated energy factor.* Calculate the integrated energy factor, IEF, in L/kWh, rounded to two decimal places, according to the following:

$$IEF = \frac{\left(C_r \times \frac{t \times 1.04}{24}\right) \times 0.454}{\left[E_{DM} + \left(\left(\frac{E_{TLP}}{1095}\right) \times t\right)\right]}$$

Where:

C_r = corrected product capacity in pints per day, as determined in section 5.2 of this appendix;

t = dehumidification mode test duration in hours, either 2 or 6 hours;

E_{DM} = energy consumption during the 2- or 6-hour dehumidification mode test in kWh, as measured in section 4.1 of this appendix;

E_{TLP} = annual combined low-power mode energy consumption in kWh per year, as calculated in section 5.3 of this appendix;

1,095 = dehumidification mode annual hours, used to convert E_{TLP} to combined low-power mode energy consumption per hour of dehumidification mode;

1.04 = the density of water in pounds per pint;

0.454 = the liters of water per pound of water; and

24 = the number of hours per day.

* * * * *

[FR Doc. 2022–11958 Filed 6–8–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 111 June 9, 2022

Part III

Environmental Protection Agency

40 CFR Parts 121, 122 and 124

Clean Water Act Section 401 Water Quality Certification Improvement Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 121, 122 and 124

[EPA–HQ–OW–2022–0128; FRL–6976.1–01–OW]

RIN 2040–AG12

Clean Water Act Section 401 Water Quality Certification Improvement Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Following a careful reconsideration of the water quality certification rule promulgated in 2020, the Environmental Protection Agency (EPA or the Agency) is publishing for public comment a proposed rule revising and replacing the Agency's 2020 regulatory requirements for water quality certification under Clean Water Act (CWA) section 401. This proposed rule would update the existing regulations to be more consistent with the statutory text of the 1972 CWA; to clarify, reinforce, and provide a measure of consistency with respect to elements of section 401 certification practice that have evolved over the 50 years since the 1971 Rule was promulgated; and to support an efficient and predictable certification process that is consistent with the water quality protection and cooperative federalism principles central to CWA section 401. This proposal is consistent with the Executive order signed on January 20, 2021, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' which directed the Agency to review the water quality certification rule EPA promulgated in 2020. The Agency is also proposing conforming amendments to the water quality certification regulations for EPA-issued National Pollutant Discharge Elimination System permits.

DATES: Comments must be received on or before August 8, 2022. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0128, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: OW-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OW–2022–0128 in the subject line of the message.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OW–2022–0128 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lauren Kasparek, Oceans, Wetlands, and Communities Division, Office of Water (4504–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–3351; email address: *cwa401@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. Public Participation
  A. Written Comments
  B. Virtual Public Hearing
III. General Information
  A. What action is the Agency taking?
  B. What is the Agency's authority for taking this action?
  C. What are the incremental costs and benefits of this action?
IV. Background
  A. Development of Section 401
  B. Overview of CWA Section 401 Requirements
  C. Prior Rulemaking Efforts Addressing Section 401
  D. Summary of Stakeholder Outreach
V. Proposed Rule
  A. When Section 401 Certification Is Required
  B. Pre-Filing Meeting Request
  C. Request for Certification
  D. Reasonable Period of Time
  E. Scope of Certification
  F. Certification Decisions
  G. Federal Agency Review
  H. EPA's Roles Under Section 401
  I. Modifications
  J. Enforcement and Inspections
  K. Neighboring Jurisdictions
  L. Treatment in a Similar Manner as a State Under Section 401
  M. Implementation Considerations
VI. Economic Analysis
VII. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Executive Summary

Clean Water Act (CWA) section 401 provides states [1] and authorized tribes [2] with a powerful tool to protect the quality of their waters from adverse impacts resulting from the construction and operation of federally licensed or permitted projects. Under CWA section 401, a Federal agency may not issue a license or permit to conduct any activity that may result in any discharge into a ''water of the United States'' [3] unless the state or authorized tribe where the discharge would originate either issues a CWA section 401 water quality certification ''that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307'' of the CWA, or waives certification. 33 U.S.C. 1341(a)(1). When granting a CWA section 401 certification, states and authorized tribes are directed by CWA section 401(d) to include conditions, including ''effluent limitations and other limitations, and monitoring requirements'' necessary to assure that the applicant for a Federal license or

[1] The CWA defines ''state'' as ''a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.'' 33 U.S.C. 1362(3).

[2] The term ''authorized tribes'' refers to tribes that have been approved for ''treatment in a manner similar to a State'' status for CWA section 401. *See* 33 U.S.C. 1377(e).

[3] The CWA, including section 401, uses the term ''navigable waters,'' which the statute defines as ''the waters of the United States, including the territorial seas.'' 33 U.S.C. 1362(7). This proposed rule uses the term ''waters of the United States'' throughout. EPA and the Corps recently published a proposed rule that would define the scope of ''waters of the United States.'' *See* Proposed Revised Definition of ''Waters of the United States.'' 86 FR 69372 (December 7, 2021). The agencies are currently interpreting ''waters of the United States'' consistent with the pre-2015 regulatory regime. The ''pre-2015 regulatory regime'' refers to the agencies' pre-2015 definition of ''waters of the United States,'' implemented consistent with relevant case law and longstanding practice, as informed by applicable guidance, training, and experience.

permit will comply with CWA sections 301, 302, 306, and 307, and with ''any other appropriate requirement of State law.'' *Id.* at 1341(d).

Congress originally created the state water quality certification requirement in section 21(b) of the Water Quality Improvement Act of 1970, which amended the Federal Water Pollution Control Act (FWPCA).[4] Congress granted states this certification authority in response to Federal agencies' failure to achieve Congress's previously stated goal of assuring that federally licensed or permitted activities comply with water quality standards.[5] Two years later, Congress revised the Federal water quality protection framework[6] when it enacted the Federal Water Pollution Control Act Amendments of 1972 (commonly known as the Clean Water Act or CWA).[7] In those Amendments, Congress placed the state water quality certification requirement in section 401, using ''substantially section 21(b) of existing law,'' with relevant conforming amendments ''to assure consistency with the [ ] changed emphasis from water quality standards to effluent limitations based on the elimination of any discharge of pollutants.'' S. Rep. No. 92–414 at 69 (1971); *see also* H.R. Rep. No. 92–911 at 121 (1972) (''Section 401 is substantially section 21(b) of the existing law amended to assure that it conforms and is consistent with the new requirements of the Federal Water Pollution Control Act.''). Section 401's grant of authority to states and authorized tribes to play a significant role in the Federal licensing or permitting process is consistent with the overall cooperative federalism framework of the CWA, which provides states and authorized tribes with a major role in implementing the CWA, balancing their traditional power to regulate land and water resources within their borders with the need for a national water quality regulation.

EPA promulgated implementing regulations for water quality certification in 1971 (1971 Rule)[8] prior to enactment of the 1972 amendments to the CWA. In 1979, the Agency recognized the need to update its water quality certification regulations, in part to be consistent with the 1972 amendments. *See* 44 FR 32854, 32856 (June 7, 1979) (noting the 40 CFR part 121 regulations predated the 1972 amendments). However, the Agency declined to update the 40 CFR part 121 regulations at the time because it had not consulted with other Federal agencies impacted by the water quality certification process, and instead developed regulations applicable to water quality certifications on EPA-issued National Pollutant Discharge Elimination System (NPDES) permits. *Id.; see e.g.,* 40 CFR 124.53 through 124.55. As a result, the 1971 Rule did not fully reflect the current statutory language, nor does it reflect or account for water quality certification practices and judicial interpretations of section 401 that have evolved over the past 50 years. Following the promulgation of the 1971 Rule, several seminal court cases have addressed fundamental aspects of the water quality certification process, including the scope of certification review and the appropriate timeframe for certification decisions. States have also developed and implemented their own water quality certification programs and practices aimed at protecting waters within their borders. During this time, the Agency supported state and tribal water quality certification practices and the critical role states and tribes play in protecting their waters under section 401.[9]

EPA revised the 1971 Rule in 2020.[10] The 2020 Rule did not update the regulations applicable to water quality certifications on EPA-issued NPDES permits but noted that the Agency would ''make any necessary conforming regulatory changes in a subsequent rulemaking.'' 85 FR 42219. The 2020 Rule represented a substantive departure from some of the Agency's and certifying authorities' core prior interpretations and practices with respect to water quality certification. Moreover, the 2020 Rule deviated sharply from the cooperative federalism framework central to section 401 and the CWA. While the 2020 Rule did reaffirm some of the Agency's and the courts' prior interpretations, *e.g.,* the need for a potential point source discharge into a water of the United States to trigger the section 401 water quality certification requirement, the 2020 Rule rejected nearly twenty-five years of Agency practice and Supreme Court precedent regarding the appropriate scope of certification review, *i.e.,* rejecting ''activity as a whole'' for the narrower ''discharge-only'' approach. Additionally, the 2020 Rule introduced new procedural requirements that caused disruption to state and tribal certification programs that had evolved over the last half century. In this proposal, the Agency is returning to some of those important core principles, such as an ''activity as a whole'' approach to the scope of certification review and greater deference to the role of states and tribes in the certification process, while retaining (and adding) elements that provide transparency and predictability for all stakeholders.

On January 20, 2021, President Biden signed Executive Order 13990 directing Federal agencies to review actions taken in the prior four years that are, or may be, inconsistent with the policies stated in the order (including, but not limited to, bolstering resilience to climate change impacts and prioritizing environmental justice[11]). Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Executive Order 13990, 86 FR 7037 (published January 25, 2021, signed January 20, 2021). Pursuant to this Executive order, EPA reviewed the 2020 Rule. EPA identified substantial concerns with a number of its provisions that were at odds with section 401's cooperative federalism approach to ensuring that states and tribes are empowered to protect their water quality. *See* Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule, 86 FR 29541, 29542 (June 2, 2021) (identifying the Agency's concerns with the 2020 Rule). As a result, the Agency announced its intention to revise the 2020 Rule so that it is (1) well-informed

[4] Water Quality Improvement Act of 1970, Public Law 91–224, 84 Stat. 91 (April 3, 1970).

[5] S. Rep. 91–351, at 26 (1969) (''Existing law declares it to be the intent of Congress that all Federal departments, agencies, and instrumentalities shall comply with water quality standards. This declaration of intent has proved unsatisfactory. One basic thrust of S. 7 is to require that all activity over which the Federal Government has direct control— . . . . federally licensed or permitted activity—be carried out in a manner to assure compliance with applicable water quality standards.'')

[6] *City of Milwaukee* v. *Illinois,* 451 U.S. 304, 310, 317 (1981).

[7] Public Law 92–500, 86 Stat. 816, as amended, Public Law 95–217, 91 Stat. 1566, 33 U.S.C. 1251 *et seq.*

[8] 36 FR 8563 (May 8, 1971), redesignated at 36 FR 22369, 22487 (November 25, 1971), further redesignated at 37 FR 21441 (October 11, 1972), further redesignated at 44 FR 32854, 32899 (June 7, 1979).

[9] *See* Wetlands and 401 Certification: Opportunities and Guidelines for States and Eligible Indian Tribes (April 1989) (hereinafter, 1989 Guidance); Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes (May 2010) (hereinafter, 2010 Handbook) (rescinded).

[10] Clean Water Act Section 401 Certification Rule, 85 FR 42210 (July 13, 2020) (hereinafter, 2020 Rule). For further discussion on the 2020 Rule, including legal challenges, please see Section IV.C of this preamble.

[11] EPA has defined environmental justice as the ''fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.'' *See https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

by stakeholder input, (2) better aligned with the cooperative federalism principles that have been central to the effective implementation of the CWA, and (3) responsive to the environmental protection and other objectives outlined in Executive Order 13990. *Id.*

Five months after EPA's announcement of its intent to reconsider and revise the 2020 Rule, on October 21, 2021, a Federal district court remanded and, while EPA had moved for a remand without vacatur,[12] vacated the 2020 Rule. *In Re Clean Water Act Rulemaking,* No. 3:20–cv–04636–WHA, 2021 WL 4924844 (N.D. Cal. October 21, 2021). The court found that vacatur was appropriate ''in light of the lack of reasoned decision-making and apparent errors in the rule's scope of certification, indications that the rule contravenes the structure and purpose of the Clean Water Act, and that EPA itself has signaled that it could not or would not adopt the same rule upon remand.'' Slip op. at 14–15. The effect of the court's vacatur was to reinstate the 1971 Rule, effective October 21, 2021. Defendant-intervenors appealed the vacatur order to the U.S. Court of Appeals for the Ninth Circuit. On April 6, 2022, the U.S. Supreme Court granted the defendant-intervenors' application for a stay of the vacatur pending the Ninth Circuit appeal. *Louisiana* v. *Am. Rivers,* No. 21A539 (S. Ct. April 6, 2022).[13] The effect of the Court's stay is that the 2020 Rule once again applies to section 401 certifications until EPA finalizes this proposed rulemaking.

The Agency is now proposing to revise the 2020 Rule to better reflect the cooperative federalism framework and text of the 1972 statutory amendments and provide needed clarity on issues such as scope of certification and the reasonable period of time for a certifying authority to act. The proposed rule would modify the regulatory text implementing section 401 to support a more efficient, effective, and predictable certifying authority-driven certification process consistent with the water quality protection and other policy goals of Executive Order 13990. The Agency is also proposing conforming amendments to the water quality certification regulations for EPA-issued NPDES permits.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2022–0128, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section above. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

B. Virtual Public Hearing

Please note that because of 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 does not anticipate holding in-person public meetings at this time. EPA is hosting a virtual public hearing on Monday, July 18, 2022; the public hearing will consist of three virtual sessions, which will be recorded for transcription purposes.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at or attend the virtual hearing on July 18, 2022, please use the online registration form available at *https://www.epa.gov/cwa-401/upcoming-outreach-and-engagement-cwa-section-401-certification.* The last day to pre-register to speak at the hearing will be July 12, 2022, three working days before the hearing date. On July 15, 2022, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/cwa-401/upcoming-outreach-and-engagement-cwa-section-401-certification.*

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 sessions to run either ahead of schedule or behind schedule. A public hearing session may end ahead of schedule if all interested speakers have had the opportunity to participate and if no other speakers come forward within 15 minutes of the last speaker.

Each commenter will have five minutes to give their name and affiliation, and provide oral testimony. EPA encourages commenters to provide the Agency with a copy of their oral testimony electronically by emailing it to *cwa401@epa.gov.* EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/cwa-401/upcoming-outreach-and-engagement-cwa-section-401-certification.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact *cwa401@epa.gov* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with *cwa401@epa.gov* and describe your needs by July 5, 2022. EPA may not be able to arrange accommodations without advanced notice.

III. General Information

A. What action is the Agency taking?

In this action, the Agency is publishing a proposed rule to replace its currently effective water quality

[12] *See* EPA's Motion for Remand Without Vacatur, No. 3:20–cv–04636–WHA (July 1, 2021).

[13] The Court's stay order does not alter EPA's legal conclusions discussed in this proposed rule. The request for a stay concerned only the appropriateness of the district court's vacatur of a promulgated rule before a decision on the merits. The stay request did not raise any issues related to the substance of CWA section 401 certification or the merits of the 2020 Rule. *See* Louisiana Application for Stay Pending Appeal in *Louisiana* v. *Am. Rivers,* No. 21A539, pp. 1, 4, 16 (March 21, 2022) (identifying ''the core issue in this case'' to be the appropriateness of the district court's vacatur order) (identifying the APA—not the CWA or section 401—as the statutory provision involved in the application for stay) (starting the application for stay with the question: ''Can a single district court vacate a rule that an agency adopted through notice-and-comment rulemaking without first finding that the rule is unlawful?''). Neither the Court's majority—which did not issue an opinion explaining its stay order—nor the dissent discussed any aspect of section 401 certification or the 2020 Rule.

certification regulations at 40 CFR part 121.

B. What is the Agency's authority for taking this action?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including but not limited to sections 101(d), 304(h), 401, 402, and 501(a).

C. What are the incremental costs and benefits of this action?

The Agency prepared the Economic Analysis for the Proposed ''Clean Water Act Section 401 Water Quality Certification Improvement Rule'' (''Economic Analysis for the Proposed Rule''), available in the rulemaking docket, for informational purposes to analyze the potential costs and benefits associated with this proposed action. The analysis is summarized in section VI in this preamble. The Economic Analysis for the Proposed Rule is qualitative because of significant limitations and uncertainties associated with estimating the incremental costs and benefits of the proposed rule; see section VI of this preamble for further discussion.

IV. Background

A. Development of Section 401

In 1965, Congress amended the Federal Water Pollution Control Act (FWPCA) to require states, or, where a state failed to act, the newly created Federal Water Pollution Control Administration, to promulgate water quality standards for interstate waters within each state. Water Quality Act of 1965, Public Law 89–234, 79 Stat. 903 (October 2, 1965). These standards were meant ''to protect the public health or welfare, enhance the quality of water and serve the purposes of [the] Act,'' which included ''enhanc[ing] the quality and value of our water resources and [] establish[ing] a national policy for the prevention, control, and abatement of water pollution.'' *Id.* Yet, only a few years later, while debating potential amendments to the FWPCA, Congress discovered that, despite that laudable national policy, states faced obstacles to achieving these newly developed water quality standards because of an unexpected source: Federal agencies. Instead of helping states cooperatively achieve these Federal policy objectives, Federal agencies were ''sometimes . . . a culprit with considerable responsibility for the pollution problem which is present.'' 115 Cong. Rec. 9011, 9030 (April 15, 1969). Federal agencies were issuing licenses and permits ''without any assurance that [water quality] standards [would] be met or even considered.'' S. Rep. No. 91–351, at 3 (August 7, 1969). As a result, states, industry groups, conservation groups, and the public alike ''questioned the justification for requiring compliance with water quality standards'' if Federal agencies themselves would not comply with those standards. *Id.* at 7.

In response to such concerns, Congress introduced language that would bolster state authority to protect their waters and ensure federally licensed or permitted projects would not ''in fact become a source of pollution'' either through ''inadequate planning or otherwise.'' 115 Cong. Rec. 9011, 9030 (April 15, 1969). Under this new provision, instead of relying on the Federal Government to ensure compliance with water quality standards, states would be granted the power to certify that there was reasonable assurance that federally licensed or permitted activities would meet water quality standards before such a license or permit could be issued. Ultimately, Congress added this new provision as section 21(b) of the Water Quality Improvement Act of 1970, Public Law 91–224, 84 Stat. 91 (April 3, 1970).

Under section 21(b)(1), applicants for Federal licenses or permits were required to obtain state certification that there was reasonable assurance that any federally licensed or permitted activity that may result in any discharge into navigable waters would not violate applicable water quality standards. *Id.* Additionally, section 21(b) also provided a role for other potentially affected states, discussed scenarios under which state certification for both Federal construction and operation licenses or permits may be necessary, and provided an opportunity for a Federal license or permit to be suspended for violating applicable water quality standards. Section 21(b) embodied the cooperative federalism principles from the 1965 amendments by providing states with the opportunity to influence, yet not ''frustrate,'' the Federal licensing or permitting process. *See* 115 Cong. Rec. 28875, 28971 (October 7, 1969) (noting the idea of state certification ''[arose] out of policy of the 1965 Act that the primary responsibility for controlling water pollution rests with the States''); *see also* H.R. Rep. No. 91–940, at 54–55 (March 24, 1970) (Conf. Rep) (adding a timeline for state certification ''[i]n order to insure that sheer inactivity by the State . . . will not frustrate the Federal application'').

In 1972, Congress significantly revised the statutory water quality protection framework.[14] Clean Water Act, Public Law 92–500, 86 Stat. 816, as amended, Public Law 95–217, 91 Stat. 1566, 33 U.S.C. 1251 *et seq.* While doing so, Congress reaffirmed ''the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution.'' [15] To this end, the 1972 amendments included section 401, which Congress considered to be ''substantially section 21(b) of the existing law amended to assure that it conforms and is consistent with the new requirements of the Federal Water Pollution Control Act.'' H.R. Rep. No. 92–911 at 121 (1972). These ''new requirements'' of the 1972 Act reflected a ''changed emphasis from water quality standards to effluent limitations based on the elimination of any discharge of pollutants.'' S. Rep. No. 92–414 at 69 (1971). As a result, unlike section 21(b) which focused only on compliance with water quality standards, section 401 required applicants for Federal licenses and permits to obtain state certification of compliance with the newly developed provisions focused on achieving effluent limitations. 33 U.S.C. 1341(a)(1). A few years later, Congress amended section 401 to correct an omission from the 1972 statute and clarify that it still intended for states to also certify compliance with water quality standards. *See* H.R. Rep. No. 95–830, at 96 (1977) (inserting section 303 in the list of applicable provisions throughout section 401).[16]

Section 401 of the 1972 Act also introduced a new subsection, subsection (d), that explicitly provided states with the ability to include ''effluent limitations and other limitations, and monitoring requirements'' in their certification to assure that the applicant will comply not only with sections 301, 302, 306, and 307, but also with ''any other appropriate requirement of State law.'' *Id.* at 1341(d). In subsection (d),

[14] *City of Milwaukee* v. *Illinois,* 451 U.S. 304, 310, 317 (1981).

[15] 33 U.S.C. 1251(b).

[16] The conference substitute noted that ''[t]he inserting of section 303 into the series of sections listed in section 401 is intended to mean that a federally licensed or permitted activity, including discharge permits under section 402, must be certified to comply with State water quality standards adopted under section 303. The inclusion of section 303 is intended to clarify the requirements of section 401. It is understood that section 303 is required by the provisions of section 301. Thus, the inclusion of section 303 in section 401 while at the same time not including section 303 in the other sections of the Act where sections 301, 302, 306, and 307 are listed is in no way intended to imply that 303 is not included by reference to 301 in those other places in the Act, such as sections 301, 309, 402, and 509 and any other point where they are listed. Section 303 is always included by reference where section 301 is listed.'' *Id.*

Congress also provided that any certification ''shall become a condition on any Federal license or permit.'' *Id.; see also* S. Rep. No. 92–414, at 69 (1971) (''The certification provided by a State in connection with any Federal license or permit must set forth effluent limitations and monitoring requirements necessary to comply with the provisions of this Act or under State law and such a certification becomes an enforceable condition on the Federal license or permit.''). Consistent with Congress's intent to empower states to protect their waters from the effects of federally licensed or permitted projects, this provision ''assure[d] that Federal licensing or permitting agencies cannot override State water quality requirements.'' S. Rep. No. 92–414, at 69 (1971).

B. Overview of CWA Section 401 Requirements

Under CWA section 401, a Federal agency may not issue a license or permit to conduct any activity that may result in any discharge into a water of the United States, unless the certifying authority where the discharge would originate either issues a CWA section 401 water quality certification or waives certification. 33 U.S.C. 1341(a)(1). The applicant for the Federal license or permit that requires section 401 certification is responsible for obtaining certification or a waiver from the certifying authority, which could be a state, territory, authorized tribe, or EPA, depending on where the discharge originates. To initiate the certification process, Federal license or permit applicants must submit a ''request for certification'' to the appropriate certifying authority. The certifying authority must act upon the request within a ''reasonable period of time (which shall not exceed one year).'' *Id.* Additionally, during the reasonable period of time, certifying authorities must provide public notice of a certification request, and where appropriate, hold a public hearing. *Id.*

If a certifying authority determines that a discharge will comply with the listed provisions in section 401(a)(1), it may grant or waive certification. When granting a CWA section 401 certification, certifying authorities must include conditions (*e.g.,* ''effluent limitations and other limitations, and monitoring requirements'') pursuant to CWA section 401(d) necessary to assure that the applicant for a Federal license or permit will comply with applicable provisions of CWA sections 301, 302, 306, and 307, and with ''any other appropriate requirement of State law.'' *Id.* at 1341(d). If a certifying authority grants certification with conditions, that certification shall become a condition on the Federal license or permit. *Id.* Once an applicant provides a Federal agency with a certification, the Federal agency may issue the license or permit. *Id.* at 1341(a)(1).

If a certifying authority is unable to provide such certification, the certifying authority may deny or waive certification. If certification is denied, the Federal agency cannot issue the Federal license or permit. If certification is waived, the Federal agency may issue the Federal license or permit. Certifying authorities may waive certification expressly, or they may waive certification by ''fail[ing] or refus[ing] to act on a request for certification within a reasonable period of time.'' Either way, the Federal licensing or permitting agency may issue the Federal license or permit. *Id.*

Although Congress provided section 401 certification authority to the jurisdiction in which the discharge originates, Congress also recognized that another state's or authorized tribe's water quality may be affected by the discharge, and it created an opportunity for such a state or tribe to raise objections to, and request a hearing on, the Federal license or permit. *See id.* at 1341(a)(2). Section 401(a)(2) requires the Federal agency to ''immediately notify'' EPA ''upon receipt'' of a ''[license or permit] application and certification.'' *Id.* EPA in turn has 30 days from that notification to determine whether the discharge ''may affect'' the water quality of any other state or authorized tribe. *Id.* If the Agency makes a ''may affect'' determination, it must notify the other state or authorized tribe, the Federal agency, and the applicant. The other state or authorized tribe then has 60 days to determine whether the discharge will violate its water quality requirements. If the other state or authorized tribe makes such a determination within those 60 days, it must notify EPA and the Federal agency, in writing, of its objection(s) to the issuance of the Federal license or permit and request a public hearing. *Id.* The Federal licensing or permitting agency is responsible for holding the public hearing. At the hearing, EPA is required to submit its evaluation and recommendations regarding the objection. Based on the recommendations from the objecting state or authorized tribe and EPA's own evaluation and recommendation, as well as any evidence presented at the hearing, the Federal agency is required to condition the license or permit ''in such manner as may be necessary to insure compliance with applicable water quality requirements.'' *Id.* The license or permit may not be issued ''if the imposition of conditions cannot ensure such compliance.'' *Id.*

Section 401 also addresses when an applicant must provide separate certifications for a facility's Federal construction license or permit and any necessary Federal operating license or permit. Under section 401(a)(3), an applicant may rely on the same certification obtained for the construction of a facility for any Federal operating license or permit for the facility if (1) the Federal agency issuing the operating license or permit notifies the certifying authority, and (2) the certifying authority does not within 60 days thereafter notify the Federal agency that ''there is no longer reasonable assurance that there will be compliance with applicable provisions of sections [301, 302, 303, 306 and 307 of the CWA].'' *Id.*[17]

Sections 401(a)(4) and (a)(5) discuss circumstances where the certified Federal license or permit may be suspended by the Federal agency. First, a Federal agency may suspend a license or permit where a certifying authority determines during a pre-operation inspection of the facility or activity that it will violate applicable water quality requirements. *Id.* at 1341(a)(4). This pre-operation inspection and possible suspension apply only where a facility or activity does not require a separate operating license or permit. Under section 401, the Federal agency may not suspend the license or permit unless it holds a public hearing.[18] *Id.* Once a license or permit is suspended, it must remain suspended until the certifying authority notifies the Federal agency that there is reasonable assurance that the facility or activity will not violate applicable water quality requirements. *Id.* Second, a Federal agency may suspend or revoke a certified license or permit if a judgment is entered under the CWA that the facility or activity violated applicable provisions of sections 301, 302, 303, 306, or 307 of the CWA. *Id.* at 1341(a)(5). Section 401 not only identifies the roles and obligations of Federal license or permit applicants, certifying authorities, and Federal agencies, it also provides specific roles

[17] Section 401(a)(3) identifies the bases a certifying authority may rely upon for finding that there is no longer reasonable assurance. These are changes after certification was granted in: construction or operation of the facility, characteristics of the water where the discharge occurs, or the applicable water quality criteria or effluent limits or other requirements. *Id.* at 1341(a)(3).

[18] Each Federal licensing or permitting agency may have its own regulations regarding additional processes for suspending a license or permit.

for EPA. First, EPA may act as a certifying authority where a state or tribe ''has no authority to give such certification.'' *Id.* at 1341(a)(1). Second, as discussed above, EPA is responsible for notifying other states or authorized tribes that may be affected by a discharge from a federally licensed or permitted activity, and where required, for providing an evaluation and recommendation(s) on such other state or authorized tribe's objections. *Id.* at 1341(a)(2). Lastly, EPA is responsible for providing technical assistance upon request from Federal agencies, certifying authorities, or Federal license or permit applicants. *Id.* at 1341(b).

C. Prior Rulemaking Efforts Addressing Section 401

In the last 50 years, EPA has undertaken two rulemaking efforts focused solely on addressing water quality certification, one of which preceded the 1972 enactment of the CWA. The Agency has also developed several guidance documents on the section 401 process. This section of the preamble discusses EPA's major rulemaking and guidance efforts over the last 50 years, including most recently, the 2020 Rule and EPA's review of it pursuant to Executive Order 13990.

1. 1971 Rule

In February 1971, EPA proposed regulations implementing section 401's predecessor provision, section 21(b). 36 FR 2516 (February 5, 1971). Those proposed regulations were divided into four subparts, one of which provided ''definitions of general applicability for the regulations and would provide for the uniform content and form of certification.'' The other three subparts focused on EPA's roles. *Id.* In May 1971, after receiving public comments, EPA finalized the water quality certification regulations with the proposed four-part structure at 18 CFR part 615. 36 FR 8563 (May 8, 1971).

The first subpart of the 1971 Rule (subpart A) established requirements that applied generally to all stakeholders in the certification process, including an identification of information that all certifying authorities must include in a certification. According to the 1971 Rule, a certifying authority was required to include several components in a certification, including the name and address of the project applicant; a statement that the certifying authority either examined the Federal license or permit application or examined other information from the project applicant and, based upon that evaluation, concluded that ''there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;'' any conditions that the certifying authority deemed ''necessary or desirable for the discharge of the activity;'' and any other information the certifying authority deemed appropriate. 40 CFR 121.2(a) (2019). Additionally, the 1971 Rule allowed for modifications to certifications upon agreement by the certifying authority, the Federal licensing or permitting agency, and EPA. *Id.* at § 121.2(b) (2019).

The second subpart of the 1971 Rule (subpart B) established a process for EPA to provide notification of potential water quality affects to other potentially affected jurisdictions. Under the 1971 Rule, the Regional Administrator was required to review the Federal license or permit application, the certification or waiver, and, where requested by EPA, any supplemental information provided by the Federal licensing or permitting agency.[19] If the Regional Administrator determined that there was ''reason to believe that a discharge may affect the quality of the waters of any State or States other than the State in which the discharge originates,'' the Regional Administrator would notify each affected state within 30 days of receipt of the application materials and certification. *Id.* at §§ 121.13, 121.16 (2019). In cases where the Federal licensing or permitting agency held a public hearing on the objection raised by an affected jurisdiction, the Federal agency was required to forward notice of such objection to the Regional Administrator no later than 30 days prior to the hearing. *Id.* at § 121.15 (2019). At the hearing, the Regional Administrator was required to submit an evaluation and ''recommendations as to whether and under what conditions the license or permit should be issued.'' *Id.*

Subpart B also provided that certifying authorities may waive the certification requirement under two circumstances: first, when the certifying authority sends written notification expressly waiving its authority to act on a request for certification; and second, when the Federal licensing or permitting agency sends written notification to the EPA Regional Administrator that the certifying authority failed to act on a certification request within a reasonable period of time after receipt of such a request. *Id.* at § 121.16 (2019). The 1971 Rule provided that the Federal licensing or permitting agency determined what constitutes a ''reasonable period of time,'' and that the period shall generally be six months, but in any event, not exceed one year. *Id.* at § 121.16(b) (2019).

The third subpart of the 1971 Rule (subpart C) established requirements that only applied when EPA acted as the certifying authority, including identifying specific information that must be included in a certification request. The project applicant was required to submit to the EPA Regional Administrator a signed request for certification that included a ''complete description of the discharge involved in the activity for which certification is sought,'' which included five items: the name and address of the project applicant, a description of the facility or activity and of any related discharge into waters of the United States, a description of the function and operation of wastewater treatment equipment, dates on which the activity and associated discharge would begin and end, and a description of the methods to be used to monitor the quality and characteristics of the discharge. *Id.* at § 121.22 (2019). Once the request was submitted to EPA, the Regional Administrator was required to provide public notice of the request and an opportunity to comment. The 1971 Rule specifically stated that ''[a]ll interested and affected parties will be given reasonable opportunity to present evidence and testimony at a public hearing on the question whether to grant or deny certification if the Regional Administrator determined that such a hearing is necessary or appropriate.'' *Id.* at § 121.23 (2019). If, after consideration of relevant information, the Regional Administrator determines that there is ''reasonable assurance that the proposed activity will not result in a violation of applicable water quality standards,'' the Regional Administrator would issue the certification. *Id.* at § 121.24 (2019).

The fourth and final subpart of the 1971 Rule (subpart D) provided that the Regional Administrator ''may, and upon request shall'' provide Federal licensing and permitting agencies with information regarding water quality standards and advise them as to the status of compliance by dischargers with the conditions and requirements of applicable water quality standards. *Id.* at § 121.30 (2019).

In November 1971, EPA reorganized and transferred several regulations, including the water quality certification regulations, into title 40 of the Code of Federal Regulations. EPA subsequently

[19] If the documents provided are insufficient to make the determination, the Regional Administrator can request any supplemental information ''as may be required to make the determination.'' 40 CFR 121.12.

redesignated the water quality certification regulations twice in the 1970s. *See* 36 FR 22369, 22487 (November 25, 1971), redesignated at 37 FR 21441 (October 11, 1972), further redesignated at 44 FR 32854, 32899 (June 7, 1979). The last redesignation effort was part of a rulemaking that extensively revised the Agency's NPDES regulations. In the revised NPDES regulations, EPA addressed water quality certifications on EPA-issued NPDES permits separate from the 1971 Rule. EPA acknowledged that the 1971 Rule was ''in need of revision'' because the ''substance of these regulations predates the 1972 amendments to the Clean Water Act.'' 44 FR 32880. However, EPA declined to revise the 1971 Rule because it had not consulted the other Federal agencies impacted by the water quality certification process. *Id.* at 32856. Instead, the Agency finalized regulations applicable to certification on EPA-issued NPDES permits. *Id.* at 32880. These regulations, which included a default reasonable period of time of 60 days, limitations on certification modifications, and requirements for certification conditions, were developed in response to practical challenges and issues arising from certification on EPA-issued permits. *Id.* Ultimately, despite the changes Congress made to the statutory text in 1972 and opportunities it had to revisit the regulatory text during redesignation efforts in the 1970s, EPA did not substantively change the 1971 Rule until 2020.

2. EPA Guidance on 1971 Rule

Although EPA did not pursue any rulemaking efforts until 2019, the Agency issued three national guidance documents on the water quality certification process set forth by the 1971 Rule. The first and second guidance documents recognized the vital role section 401 certification can play in protecting state and tribal water quality, sought to inform states and tribes how to use the certification program to protect their waters, and explained how to leverage available resources to operate or expand their certification programs. These documents provided states and tribes with background on the certification process, discussed the relevant case law, and identified data sources that could inform the certification review process. Additionally, both documents provided tangible examples of state and tribal experiences with section 401 that could inform other states and tribes interested in developing their certification programs.

The first guidance document, issued in 1989, focused on how states and tribes could use water quality certifications to protect wetlands. Wetlands and 401 Certification: Opportunities and Guidelines for States and Eligible Indian Tribes (April 1989) (''1989 Guidance''). While the guidance document focused on the use of water quality certifications in lieu of, or in addition to, state or tribal wetlands regulatory programs, it provided helpful background information on the certification process. It also highlighted various state programs and water quality certification practices to demonstrate how other certifying authorities could approach the certification process. For example, the guidance document highlighted a certification denial issued by the Pennsylvania Department of Environmental Resources to illustrate that ''all of the potential effects of a proposed activity on water quality—direct and indirect, short and long term, upstream and downstream, construction and operation—should be part of a State's certification review.'' *Id.* at 22–23. Additionally, the 1989 Guidance discussed considerations states or tribes could examine when developing their own section 401 implementing regulations, as well as programs and resources states and tribes could look to for technical support when making certification decisions. *Id.* at 30–37.

The second guidance document, issued in 2010, reflected the development of case law and state and tribal program experiences over the two decades following the 1989 Guidance. Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes (May 2010) (''2010 Handbook'') (rescinded). Instead of focusing on certifications in the context of wetland protection, the 2010 Guidance focused more broadly on how the certification process could help states and tribes achieve their water quality goals. Like the 1989 Guidance, the 2010 Guidance discussed the certification process, using state and tribal programs as examples, and explored methods and means for states and tribes to leverage available funding, staffing, and data sources to fully implement a water quality certification program. This guidance document was rescinded on June 7, 2019, concurrent with the publication of the third guidance document.

The third guidance document was issued in 2019 pursuant to Executive Order 13868 (now revoked). Clean Water Act Section 401 Guidance for Federal Agencies, States and Authorized Tribes (June 2019) (''2019 Guidance'') (rescinded). The 2019 guidance document said it was meant to ''facilitate consistent implementation of section 401 and 1971 certification regulations'' because the 2010 Handbook allegedly did not ''reflect current case law interpreting CWA section 401.'' 85 FR 42213. The guidance document focused on three topics: timeline for certification review and action, the scope of section 401, and the information within the scope of a certifying authority's review. 2019 Guidance, at 1. The 2019 Guidance was rescinded on July 13, 2020, concurrent with the publication of the final 2020 Rule.

3. Development of the 2020 Rule

In addition to directing EPA to review its 2010 Handbook and issue new section 401 guidance, Executive Order 13868 also directed EPA to review the 1971 Rule and (1) issue a new proposed regulation within 120 days and (2) issue a final regulation within 13 months. 84 FR 13495, 13496 (April 15, 2019). It directed the Agency to focus on various aspects of the certification process such as the scope of review, and determine whether ''any provisions thereof should be clarified to be consistent with the policies described in section 2 of [the] order.'' *Id.* EPA released the proposed rule on August 22, 2019.[20] EPA promulgated a final rule on July 13, 2020. Clean Water Act Section 401 Certification Rule, 85 FR 42210 (July 13, 2020) (''2020 Rule'').

The 2020 Rule reaffirmed that Federal agencies unilaterally set the reasonable period of time, clarified that the certification requirement was triggered by a federally licensed or permitted discharge into a ''water of the United States,'' and reaffirmed that certifying authorities may explicitly waive certification. The 2020 Rule also introduced several new features including one that allowed Federal agencies to review certification decisions for compliance with the 2020 Rule's requirements and, if the certification decision did not comply with these requirements, allowed Federal agencies to deem such non-compliant certifications as waived. The 2020 Rule, citing *Hoopa Valley Tribe* v. *FERC,* 913 F.3d 1099 (DC Cir. 2019), prohibited a certifying authority from requesting a project applicant to withdraw and resubmit a certification request. The 2020 Rule also rejected the scope of certification review (''activity as a whole'') affirmed by the Supreme Court in *PUD No. 1 of Jefferson County*

[20] Updating Regulations on Water Quality Certifications, 84 FR 44080 (August 22, 2019).

v. *Washington Department of Ecology,* 511 U.S. 700 (1994), in favor of a more truncated interpretation (''discharge-only'' approach) favored by two dissenting Justices in that case.

Following publication, the 2020 Rule was subject to legal challenge in three Federal district courts by states, tribes, and non-governmental organizations.[21] On October 21, 2021, following extensive briefing and a hearing on EPA's motion for remand without vacatur, the U.S. District Court for the Northern District of California remanded and vacated[22] the 2020 Rule. *In re Clean Water Act Rulemaking,* No. 3:20–cv–04636–WHA, 2021 WL 4924844 (N.D. Cal. October 21, 2021). The court found that vacatur was appropriate ''in light of the lack of reasoned decision-making and apparent errors in the rule's scope of certification, indications that the rule contravenes the structure and purpose of the Clean Water Act, and that EPA itself has signaled that it could not or would not adopt the same rule upon remand.'' Slip op. at 14–15, 2021 WL 4924844, at *8. The court order required a temporary return to EPA's 1971 Rule until EPA finalizes a new rule.[23] This case is currently on appeal by industry stakeholders and eight states in the U.S. Court of Appeals for the Ninth Circuit. On March 21, 2022, industry stakeholders and eight states filed an application for a stay of the vacatur pending appeal in the Ninth Circuit. On April 6, 2022, the U.S. Supreme Court granted the application for a stay of the vacatur pending resolution of the appeal of the vacatur in the Ninth Circuit. *Louisiana* v. *Am. Rivers,* No. 21A539 (S. Ct. April 6, 2022).

4. Executive Order 13990 and Review of the 2020 Rule

On January 20, 2021, President Biden signed Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O.). 86 FR 7037 (published January 25, 2021, signed January 20, 2021). The E.O. provides that it's the policy of the Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. *Id.* at 7037, Section 1. The E.O. ''directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.'' *Id.* ''For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.'' *Id.,* Section 2(a). The E.O. also revoked Executive Order 13868 of April 10, 2019 (Promoting Energy Infrastructure and Economic Growth), which initiated development of the 2020 Rule. The 2020 Rule also was specifically identified for review under the E.O. *See* Fact Sheet: List of Agency Actions for Review, available at *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/* (last visited on January 27, 2022).

EPA reviewed the 2020 Rule in accordance with Executive Order 13990, and in the spring of 2021, determined that it would propose revisions to the 2020 Rule through a new rulemaking effort. *See* Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule, 86 FR 29541 (June 2, 2021). EPA considered a number of factors in making this determination, including but not limited to: the text of CWA section 401; Congressional intent and the cooperative federalism framework of CWA section 401; concerns raised by stakeholders about the 2020 Rule, including implementation related feedback; the principles outlined in the E.O. and issues raised in ongoing litigation challenging the 2020 Rule. *Id.* In particular, the Agency identified substantial concerns about whether portions of the 2020 Rule impinged on the cooperative federalism principles central to CWA section 401. The Agency identified this and other concerns as they related to different provisions of the 2020 Rule including certification requests, the reasonable period of time, scope of certification, certification actions and Federal agency review, enforcement, and modifications. *See id.* at 29543–44.

Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (''*Fox*''); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29, 42 (1983); *see also Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221 (2016) (''Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.''). Such a decision need not be based upon a change of facts or circumstances. A revised rulemaking based ''on a reevaluation of which policy would be better in light of the facts'' is ''well within an agency's discretion.'' *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (DC Cir. 2012) (*citing Fox,* 556 U.S. at 514–15). The Agency has reviewed the 2020 Rule and determined that the rule should be replaced.

Accordingly, EPA is now proposing to revise the 2020 Rule to be fully consistent with the 1972 CWA amendments, the Agency's legal authority, and the principles outlined in Executive Order 13990. This proposed rule would revise and replace the 2020 Rule to better reflect the 1972 CWA's statutory text, the legislative history regarding section 401, and the broad water quality protection goals of the Act. In addition, the proposed rule will clarify certain aspects of section 401 implementation that have evolved in response to over 50 years of judicial interpretation and certifying authority practice, and support an efficient and predictable water quality certification process that is consistent with the cooperative federalism principles central to CWA section 401.

D. Summary of Stakeholder Outreach

Following the publication of EPA's notice of intent to revise the 2020 Rule, the Agency opened a public docket to receive written pre-proposal recommendations for a 60-day period beginning on June 2, 2021, and concluding on August 2, 2021. The

[21] *In Re Clean Water Act Rulemaking,* No. 3:20–cv–04636–WHA (N.D. Cal.); *Delaware Riverkeeper et al.* v. *EPA,* No. 2:20–cv–03412 (E.D.P.A.); *S.C. Coastal Conservation League* v. *EPA,* No. 2:20–cv–03062 (D.S.C.).

[22] To remand a rule means that the court returns the rule to the Agency for further action. To vacate a rule means that the court decides that rule is null and void.

[23] The two other courts also remanded the 2020 Rule to EPA, but without vacatur. Order, *Delaware Riverkeeper* v. *EPA,* No. 2:20–cv–03412 (E.D. Pa. August 6, 2021) (determining that vacatur was not appropriate because the court ''has not yet, and will not, make a finding on the substantive validity of the Certification Rule''); Order, *S.C. Coastal Conservation League* v. *EPA,* No. 2:20–cv–03062 (D.S.C. August 2, 2021) (remanding without vacating).

Agency received nearly 3,000 recommendations from members of the public, which can be found in the pre-proposal docket. *See* Docket ID No. EPA–HQ–OW–2021–0302. The **Federal Register** publication requested feedback related to key issues identified during implementation of the 2020 Rule, including but not limited to issues regarding pre-filing meeting requests, certification requests, reasonable period of time, scope of certification, certification actions and Federal agency review, enforcement, modifications, neighboring jurisdictions, data and other information, and implementation coordination. *See* 86 FR 29543–44.

EPA also held a series of virtual listening sessions for certifying authorities (June 14, June 23, and June 24, 2021), project applicants (June 15, 2021), and the public (June 15, June 23, 2021) to gain further pre-proposal input. *See id.* at 29544 (announcing EPA's intention to hold multiple webinar-based listening sessions). EPA also met with stakeholders upon request during development of this proposed rule. More information about the outreach and engagement conducted by EPA during the pre-proposal input period can be found in Docket ID No. EPA–HQ–OW–2022–0128. Additionally, EPA also met with other Federal licensing and permitting agencies to solicit feedback on the **Federal Register** publication. At the virtual listening sessions, the Agency provided a presentation that provided background on section 401 and prior Agency actions and sought input on the Agency's intent to revise the 2020 Rule and the specific issues included in the **Federal Register** publication described above.

The Agency heard from stakeholders representing a diverse range of interests and positions and received a wide variety of recommendations and suggestions during this pre-proposal outreach process. Certifying authorities expressed concern about the limited role of states and tribes under the 2020 Rule, and they called for increased flexibility in implementing section 401 to fully protect their water resources. During the project proponent listening session, project proponents shared feedback about the need to streamline the certification process and recommended that the new rule prevent delays in determining certification decisions. In the general public listening sessions, speakers from non-governmental environmental and water conservation organizations reinforced the idea that states and tribes should be accorded greater deference in the certification process. An overarching theme articulated by many speakers from various stakeholder groups was the need for EPA's new rule to provide increased guidance and clarity.

The Agency also initiated a tribal consultation and coordination process on June 7, 2021. The Agency engaged tribes over a 90-day consultation period during development of this proposed rule that concluded on September 7, 2021, including two tribal consultation kickoff webinars on June 29, 2021, and July 7, 2021. The Agency received consultation letters from eight tribes and three tribal organizations. The Agency did not receive any requests for consultation during this time, although several tribes expressed an interest in receiving additional information and ongoing engagement throughout the rulemaking process. The Agency anticipates that consultation meetings will be held with tribes during the rulemaking process. Several tribes commented that the 2020 Rule impaired or undermined tribal sovereignty and their ability to protect tribal waters. Many tribes provided input regarding section 401 certification process improvements. Most tribes were generally positive about a provision for a pre-filing meeting request, however some had concerns that the 30-day wait period (before a project proponent could request certification) is very rigid and would like to see more flexibility in allowing certifying authorities to waive the 30-day requirement. Some tribes believe ''the reasonable period of time'' should start when the application is deemed complete, not when the initial request for certification is received. Most tribes argued that the 2020 Rule's narrowing of the scope of certification was inconsistent with Congressional intent for tribes and states to have an effective tool to protect the quality of waters under their jurisdiction. A few tribal organizations expressed concern that current implementation of section 401(a)(2) does not protect off-reservation treaty rights from discharges. Additional information about the tribal consultation process can be found in section VII.F in this preamble and the Summary of Tribal Consultation and Coordination, which is available in the docket for this proposed rule.

The Agency has considered the input it received as part of the tribal consultation process and other opportunities for pre-proposal recommendations. EPA welcomes feedback on this proposed rule through the upcoming virtual public hearing and the 60-day public comment period initiated through publication of this action. The Agency will consider comments received during the comment period on this proposal, and this consideration will be reflected in the final rule and supporting documents.

V. Proposed Rule

EPA is the primary agency responsible for developing regulations and guidance to ensure effective implementation of all CWA programs, including section 401. *See* 33 U.S.C. 1251(d), 1361(a). The Agency is proposing to revise the section 401 regulations to better align its regulations with the cooperative federalism and water quality protection principles enshrined in the text and legislative history of the 1972 CWA. Additionally, the Agency is seeking to provide greater clarity and acknowledgment of essential water quality protection concepts from Executive Order 13990. In addition to providing a necessary regulatory reset on significant issues such as the scope of certification, Federal agency review, and the reasonable period of time, the Agency proposes to update the regulatory text to foster a more efficient and predictable certification process. As it has already demonstrated through its extensive pre-proposal outreach, EPA intends for this rulemaking to be well-informed by stakeholder input on all aspects of the certification process and welcomes comment on all facets of this proposal.

In light of the proposed revisions to part 121, EPA is also proposing to make conforming changes to the part 124 regulations governing CWA section 401 certifications for EPA-issued NPDES permits. The purpose of these conforming changes is to ensure that—assuming the proposed part 121 changes are adopted—the part 124 regulations are consistent with the revised provisions of part 121. To that end, EPA is proposing to make targeted deletions to specific provisions of the regulations at 40 CFR 124.53 and 124.55 to conform those sections with this proposal, explicitly deleting 40 CFR 124.53(b), (c), and (e), as well as § 124.55(b). EPA is also proposing to make targeted revisions to the regulations at 40 CFR 124.53(d), 124.54(a) and (b), 124.55(a), (c), and (d), consistent with those proposed deletions and this proposal. EPA is also proposing to make targeted conforming revisions to the regulations at 40 CFR 122.4(b) and 122.44(d)(3). EPA explains in further detail the reasons for each conforming change (beyond mere technical revisions) following the preamble discussion of the part 121 proposal that necessitates conforming revisions to part 124. EPA is seeking comment on whether the Agency has identified all changes to the part 124 regulations that conflict or potentially conflict with this proposal

and therefore need to be made to conform. This proposed part 121 regulations would apply to all Federal licenses or permits subject to CWA section 401 certification.[24] EPA accordingly intends for this part 121 proposal to apply to EPA-issued NPDES permits, even where EPA is not proposing conforming edits to part 124.

EPA is also proposing to make several revisions to the definition section in light of this proposed rulemaking. EPA is proposing to make minor revisions to the definition of ''Administrator'', currently located at § 121.1(a), to remove the reference to authorized representatives. Instead, the Agency is proposing to add a separate definition for ''Regional Administrator''. *See* proposed § 121.1(k). The Agency is also proposing to remove the definition for ''certification'', which is currently located at § 121.1(b), because it does not believe it is necessary to define the term. Additionally, the Agency is proposing to remove the definition for ''certified project'', currently located at § 121.1(d), and ''proposed project'', currently located at § 121.1(k), because the Agency is not proposing to use these terms throughout other regulatory provisions. Other proposed revisions to regulatory definitions are discussed throughout this preamble; the Agency welcomes any comments on these definitions.

A. When Section 401 Certification Is Required

In this proposed rulemaking, EPA is proposing a number of definitional and other revisions to clarify the circumstances under which a section 401 certification is required. These proposed revisions are consistent with the Agency's longstanding interpretation of section 401, including in the 2020 Rule, that an applicant for a Federal license or permit to conduct any activity that may result in any point source discharge into the navigable waters is required to obtain a section 401 certification. Accordingly, the Agency is proposing minor revisions to the regulatory text currently located at § 121.2 to affirm that a Federal license or permit for any potential point source discharge into a water of the United States requires a certification or waiver.

With respect to the definition section, EPA is proposing to clarify the roles of the stakeholders in the certification process. First, the Agency is proposing non-substantive modifications to the definition of ''Federal agency'' currently located at § 121.1(g). Second, the Agency is proposing to retain the term ''project proponent'' to define the stakeholder seeking certification. While the term ''applicant'' is used in section 401, that term does not clearly reflect and include all the stakeholders who might seek certification. For example, Federal agencies themselves (and not third-party applicants) seek section 401 certification on the issuance of general permits (*e.g.,* U.S. Army Corps of Engineers' (Corps') Nationwide Permits, EPA's Construction General Permits). Additionally, contractors or other agents will often seek certification on behalf of a project applicant. The term ''project proponent'' is meant to include the applicant for a Federal license or permit, as well as any other entity that may seek certification (*e.g.,* agent of an applicant or a Federal agency, such as EPA when it is the permitting authority for a National Pollutant Discharge Elimination System (NPDES) permit). Lastly, the Agency is proposing non-substantive changes to the definition of ''certifying authority'' currently located at § 121.1(e). EPA is requesting comment on these definitions and the proposed language to clarify the circumstances under which section 401 certification is required. EPA's rationale for determining when certification is required is discussed in further detail below.

1. Federally Licensed or Permitted Activity

Section 401 certification is required for any Federal license or permit to conduct any activity that may result in any discharge into a ''water of the United States.'' 33 U.S.C. 1341(a)(1). The Agency is proposing to retain the 2020 Rule's definition for a ''license or permit'' with minor modifications.

The Agency is not proposing to provide an exclusive list of Federal licenses and permits that may be subject to section 401. The CWA itself does not list specific Federal licenses and permits that are subject to section 401 certification requirements. The most common examples of licenses or permits that may be subject to section 401 certification are CWA section 402 NPDES permits issued by EPA in jurisdictions where the EPA administers the NPDES permitting program; CWA section 404 permits for the discharge of dredged or fill material and Rivers and Harbors Act sections 9 and 10 permits issued by the Army Corps of Engineers; and hydropower and interstate natural gas pipeline licenses issued by the Federal Energy Regulatory Commission (FERC).[25]

Section 401 certification is not required for licenses or permits issued by a state or tribe that has been authorized to administer a permit program. For example, states and tribes may be authorized to administer the section 402 NPDES permitting program[26] or the section 404 dredge and fill permitting program.[27] Permits issued by states or tribes pursuant to their approved program are not subject to section 401 of the CWA as the programs operate in lieu of the Federal program, under state or tribal authorities. The state or tribal permit is not a ''Federal'' permit for purposes of section 401. The CWA is clear that the license or permit prompting the need for a section 401 certification must be a Federal license or permit, that is, one issued by a Federal agency. This conclusion is supported by the legislative history of CWA section 401, which noted that ''since permits granted by States under section 402 are not Federal permits—but State permits—the certification procedures are not applicable.'' H.R. Rep. No. 92–911, at 127 (1972). Additionally, the legislative history of the CWA amendments of 1977, discussing state assumption of section 404, also noted that ''[t]he conferees wish to emphasize that such a State program is one which is established under State law and which functions in lieu of the Federal program. It is not a delegation of Federal authority.'' H.R. Rep. No. 95–830, at 104 (1977).

2. Potential for a Discharge To Occur

The presence of, or potential for, a discharge is a key determinant for when a water quality certification is required. 33 U.S.C. 1341(a)(1) (''A certification is required for ''a Federal license or permit to conduct any activity . . . which *may*

[24] *See* proposed § 121.1(e), (h) (defining ''Federal agency'' to mean ''any agency of the Federal Government to which application is made for a license or permit that is subject to Clean Water Act section 401,'' and similarly defining ''license or permit'' to mean ''any license or permit issued or granted by an agency of the Federal Government to conduct any activity which may result in any discharge into waters of the United States'').

[25] The Corps also requires section 401 certification for its civil works projects, even though there is no Federal license or permit associated with those projects. The Corps' current regulations require the Corps to seek section 401 certification for dredge and fill projects involving a discharge into waters of the United States, regardless of whether the Corps issues itself a permit for those activities. *See* 33 CFR 336.1(a)(1) (''The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.''); 33 CFR 335.2 (''[T]he Corps does not issue itself a CWA permit to authorize Corps discharges of dredged material or fill material into U.S. waters but does apply the 404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws.''). In these instances, EPA understands that the Corps will follow the certification process as described in this proposal.

[26] 33 U.S.C. 1342(b).

[27] 33 U.S.C. 1344(g).

result in any discharge into the navigable waters. . .'') (emphasis added).

The Agency is not proposing a specific process or procedure for project proponents, certifying authorities, and/or Federal agencies to follow in order to determine whether or not a federally licensed or permitted activity may result in a discharge and therefore require section 401 certification. After 50 years of implementing section 401, EPA's experience is that Federal agencies and certifying authorities are well-versed in the practice of determining which Federal licenses or permits may result in discharges. Ultimately, the project proponent is responsible for obtaining all necessary permits and authorizations, including a section 401 certification. If there is a potential for a project to discharge into a ''water of the United States,'' a Federal agency cannot issue the Federal license or permit unless a section 401 certification is granted or waived by the certifying authority. EPA recommends that project proponents engage in early discussions with certifying authorities and Federal agencies to determine whether their federally licensed or permitted activity will require section 401 certification.

The Agency requests comment on whether it should propose a specific process or procedure for project proponents, certifying authorities, and/or Federal agencies to follow in order to determine whether or not a federally licensed or permitted activity may result in a discharge and therefore require section 401 certification.

3. Discharge

Consistent with the Agency's longstanding position and the 2020 Rule, EPA is proposing that a point source discharge, or potential for one, is required to trigger section 401. *See* proposed § 121.2. Additionally, the Agency is clarifying that, consistent with *S.D. Warren* v. *Maine Board of Environmental Protection,* 547 U.S. 370 (2006), discussed below, a point source discharge triggering section 401 does not require the addition of pollutants.

The CWA provides that ''[t]he term 'discharge' when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.'' 33 U.S.C. 1362(16). The CWA defines ''discharge of a pollutant'' to mean ''any addition of any pollutant to navigable waters from any point source.'' *Id.* at 1362(12). EPA and the Corps have long interpreted the definition of ''discharge'' broadly to include, but not be limited to, ''discharges of pollutants.''

This interpretation is consistent with the text of the statute as interpreted by the U.S. Supreme Court. In *S.D. Warren Co,* a hydropower dam operator asserted that its dams did not result in discharges that would require section 401 certification because the dams only released water that ''adds nothing to the river that was not there above the dams.'' 547 U.S. 370, 374–75, 378 (2006). The Court stated that the term discharge is broader than ''discharge of a pollutant'' and ''discharge of pollutants.'' Observing that the term ''discharge'' is not specifically defined in the statute, the Court applied the ordinary dictionary meaning, ''flowing or issuing out.'' *Id.* In applying this meaning to hydroelectric dams, the Court held that releasing water through a dam constituted a discharge for purposes of section 401 and, thus, the CWA provided states with the ability to address water quality impacts from these releases through the certification process. *Id.* at 385–86. The Court explicitly rejected the argument that an ''addition'' was necessary for a ''discharge,'' stating ''[w]e disagree that an addition is fundamental to any discharge.'' *Id.* at 379 n.5.

While the Supreme Court has held that the addition of a pollutant is not necessary for a discharge to prompt the need for a CWA section 401 certification, the Ninth Circuit has held that such certification triggering discharges must be from point sources. *Or. Natural Desert Ass'n* v. *Dombeck,* 172 F.3d 1092, 1093–94 (9th Cir. 1998) (''*Dombeck*'').[28] In *Dombeck,* the Ninth Circuit addressed the question whether ''the term 'discharge' in [section 401] includes releases from nonpoint sources as well as releases from point sources.'' *Id.* At issue in that case was whether a cattle-grazing permit issued by the U.S. Forest Service required a section 401 certification.

The court observed that the word ''discharge'' is used consistently in the Act to refer to releases from point sources, whereas the term ''runoff'' is used to describe pollution flowing from nonpoint sources, and Congress did not say ''runoff'' in section 401. *Id.* at 1097. The court also found that all of the CWA sections cross-referenced in section 401(a)(1) were related to the regulation of point sources. *Id.* Regarding the inclusion of section 303, the CWA section requiring states to adopt and EPA to approve water quality standards, the court said that section 303 did ''not itself regulate nonpoint source pollution'' and, therefore, ''did not sweep nonpoint sources into the scope of [section 401].'' *Id.*

Following the Supreme Court's decision in *S.D. Warren* that the addition of a pollutant was not needed to trigger section 401, the Ninth Circuit reaffirmed its earlier decision that section 401 was only triggered by a point source discharge. *Or. Natural Desert Ass'n* v. *USFS,* 550 F.3d 778 (9th Cir. 2008). The Ninth Circuit found that ''[t]he issue in *S.D. Warren* was narrowly tailored to determine whether a discharge from a point source could occur absent addition of any pollutant to the water emitted from the dam turbines.'' *Id.*at 783–84; *see S.D. Warren,* 547 U.S. at 376–87.[29] The Ninth Circuit held that ''[n]either the ruling nor the reasoning in *S.D. Warren* is inconsistent with this court's treatment of nonpoint sources in [section] 401 of the Act, as explained in *Dombeck.* Accordingly, the principles of *stare decisis* apply, and this court need not revisit the issue decided in *Dombeck.*'' *USFS,* 550 F.3d at 785. EPA has consistently implemented the Ninth Circuit's interpretation of section 401 as requiring the potential for a point source discharge (with or without the addition of pollutants) to trigger section 401. *See* 85 FR 42238; 2010 Handbook (rescinded) (discussing requirement of section 401 certification when there is a point source discharge).[30]

Although the Agency is retaining the same interpretation of ''discharge'' as the 2020 Rule, to simplify the regulatory architecture, the Agency is proposing to remove the definition of ''discharge'' currently located at § 121.1(f) and instead incorporate those definitional concepts into the regulatory text at proposed § 121.2 which discusses when certification is required. The Agency believes this simpler approach will provide greater clarity about the nature

[28] In *Dombeck,* the United States took the position that the term ''discharge'' at 33 U.S.C. 1362(14) did not include nonpoint sources because there was nothing in the definition or the legislative history of the term that suggested it extended to nonpoint source pollution. Brief of the United States in *Or. Natural Desert Ass'n* v. *Dombeck,* Nos. 97–3506, 97–35112, 97–35115, at 18–21 (9th Cir. 1997). Additionally, the United States argued that section 401's legislative history did not suggest that ''discharge'' included nonpoint sources. *Id.* at 23–24.

[29] The United States made a similar observation in its brief in *USFS. See* Brief of the United States in *ONDA* v. *USFS,* No. 08–35205, at 22 (9th Cir. 2008).

[30] The United States has suggested that section 401 requires the discharge to be from a point source in briefs filed before both the Ninth Circuit and the Supreme Court. *See, e.g.,* Briefs of the United States in *ONDA* v. *Dombeck,* Nos. 97–3506, 97–35112, 97–35115 (9th Cir. 1997), *ONDA* v. *USFS,* No. 08–35205 (9th Cir. 2008), Amicus brief of the United States in *S.D. Warren Co.* v. *Maine Bd. of Envtl. Prot.,* No. 04–1527 (January 9, 2006).

of discharges that trigger the need for section 401 certification or waiver.

Just as the Agency is not proposing to define the term ''discharge'' for purposes of section 401, the Agency is not proposing a distinct definition of the term ''point source.'' Rather, the Agency will continue to rely on the definition of point source in section 502(14) of the CWA,[31] as interpreted by the courts.[32] For example, courts have concluded that bulldozers, mechanized land clearing machinery, and similar types of equipment used for discharging dredge or fill material are ''point sources'' for purposes of the CWA. *See, e.g., Avoyelles Sportsmen's League* v. *Marsh,* 715 F.2d 897 (5th Cir. 1983); *United States* v. *Larkins,* 657 F. Supp. 76 (W.D. Ky. 1987), *aff'd,* 852 F.2d 189 (6th Cir. 1988). On the other hand, courts have concluded that a water withdrawal is not a point source discharge and therefore does not require a water quality certification.[33]

4. ''Into the Navigable Waters''

Section 401 says that certification is required for an activity that ''may result in any discharge into the navigable waters.'' 33 U.S.C. 1341(a)(1). The term ''navigable waters'' is defined as ''waters of the United States, including the territorial seas.'' 33 U.S.C. 1362(7).

The proposed rule provides that section 401 certification is required for Federal licenses or permits where there is a potential discharge into a water of the United States. This interpretation is consistent with the plain language and legislative history of the CWA. *See* H.R. Rep. No. 91–911, at 124 (1972) (''It should be clearly noted that the certifications required by section 401 are for activities which may result in any discharge into navigable waters.''). This interpretation is also consistent with the Agency's longstanding position and practice. *See, e.g.,* 2010 Handbook, at 3, 5 (rescinded) (''Since [section] 401 certification only applies where there may be a discharge into waters of the [United States], how states or tribes designate their own waters does not determine whether [section] 401 certification is required.'').

Potential discharges into state or tribal waters that are not ''waters of the United States'' do not trigger the requirement to obtain section 401 certification. However, as discussed in section V.E. in this preamble, once the certification requirement is triggered by the prerequisite of a point source discharge into a water of the United States, the certifying authority may choose to grant, condition, or deny water quality certifications based on the potential impact of the ''activity as a whole'' on waters of the United States and other state or tribal waters.

B. Pre-Filing Meeting Request

EPA is proposing to retain the requirement for a project proponent to request a pre-filing meeting with the certifying authority at least 30 days before submitting a water quality certification request. However, recognizing the variety of project types and complexities, the proposed rule also provides certifying authorities with the flexibility to waive or shorten this pre-filing meeting request requirement. This requirement to request a pre-filing meeting will ensure that certifying authorities have an opportunity, should they desire it, to receive early notification and to discuss the project with the project proponent before the statutory timeframe for review begins. The intent of this proposed provision is to support early engagement and coordination between certifying authorities and project proponents.

The 2020 Rule introduced the pre-filing meeting request requirement to encourage early coordination between parties to identify needs and concerns before the start of the reasonable period of time. EPA interpreted the term ''request for certification'' in CWA section 401(a)(1) as being broad enough to include an implied requirement that, as part of the submission of a request for certification, a project proponent shall also provide the certifying authority with advance notice that a certification request is imminent. The time (no longer than one year) that certifying authorities are provided under the CWA to act on a certification request (or else waive the certification requirements of section 401(a)) provided additional justification in this context to interpret the term ''request for certification'' to allow EPA to require a pre-filing meeting request.

The 2020 Rule proposal originally limited the pre-filing meeting request requirement to project proponents seeking certification in jurisdictions where EPA acts as the certifying authority. However, in response to stakeholder feedback on the proposed 2020 Rule, the Agency extended the pre-filing meeting request requirement to all project proponents. As a result, the final 2020 Rule required all project proponents to request a pre-filing meeting at least 30 days prior to submitting a water quality certification request. 85 FR 42241 (July 13, 2020). The 2020 Rule did not provide any mechanism for certifying authorities to waive or otherwise alter the 30-day period between a project proponent requesting a pre-filing meeting and subsequently submitting a certification request. Instead, there was a mandatory 30-day period that had to pass before the project proponent could submit a certification request.

During pre-proposal outreach on this proposed rule, some stakeholders found the pre-filing meeting request requirement to be essential to an efficient certification process. Some stakeholders shared that the pre-filing meetings were helpful in allowing certifying authorities to inform project proponents of the specific project information needed for an effective evaluation of the certification request. However, some stakeholders expressed concern about the mandatory 30-day ''waiting period'' between the pre-filing meeting request and the certification request, particularly in emergency permit situations. Stakeholders also noted that the 30-day mandatory period could create delays for Federal licensing or permitting agencies. Some stakeholders noted that most certification requests involve smaller, less complex projects and requiring the project proponent to request a pre-filing meeting and wait 30 days before submitting a request for certification was unnecessarily burdensome. Stakeholders suggested that EPA should add flexibility to the process and give certifying authorities the ability to waive the pre-filing meeting request (*e.g.,* for smaller and less complex projects and emergencies).

Pre-filing meeting requests ensure that certifying authorities can receive early notification of and discuss the project and potential information needs with the project proponent before the statutory ''reasonable period of time'' for certification review begins (*e.g.,* allow

[31] The CWA defines point source as ''any discernible, confined and discrete conveyance . . . *from which pollutants are or may be discharged.*'' 33 U.S.C. 1362(14) (emphasis added).

[32] In *County of Maui, Hawaii* v. *Hawaii Wildlife Fund, et al.,* the Supreme Court addressed the question whether the CWA requires a NPDES permit under section 402 of the Act when pollutants originate from a point source but are conveyed to navigable waters by groundwater. 140 S. Ct. 1462 (2020). The Court held that ''the statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge.'' *Id.* at 1476 (emphasis in original). The Court articulated a number of factors that may prove relevant for purposes of section 402 permitting. *Id.* at 1476–77. Consistent with the rationale of the Court's decision in *County of Maui,* any point source discharge that is the functional equivalent of a direct discharge into navigable waters would also trigger section 401. This broad interpretation is also consistent with *S.D. Warren,* 547 U.S. at 375.

[33] *See, e.g., North Carolina* v. *FERC,* 112 F.3d 1175, 1187 (D.C. Cir. 1997) (holding that withdrawal of water from lake does not constitute discharge for CWA section 401 purposes).

the certifying authority to collect important details about a proposed project and its potential effects on water quality). Under this proposal, a project proponent is required to request a pre-filing meeting from the certifying authority in accordance with the certifying authority's applicable submission procedures at least 30 days prior to submitting a certification request, unless the certifying authority waives or shortens this requirement. Similar to the approach taken under the 2020 Rule, EPA is not proposing to define by regulation the process or manner for project proponents to submit pre-filing meeting requests. Rather, EPA intends the term ''applicable submission procedures'' to mean the submission procedures deemed appropriate by the certifying authority. EPA intends for certifying authorities to communicate to project proponents when a pre-filing meeting request is necessary and when a pre-filing meeting request is waived. For example, certifying authorities could either require or waive the pre-filing meeting request requirement for all projects or specific types of projects. EPA recommends that certifying authorities make this information readily available to project proponents in an easily accessible manner to allow for a transparent and efficient process (*e.g.,* posting a list of project types that require a pre-filing meeting request on the certifying authority's website).

When EPA acts as the certifying authority, EPA would generally find the following submission procedures to be appropriate. First, EPA recommends that project proponents submit a pre-filing meeting request to the Agency in writing. As discussed in section V.C in this preamble, the project proponent must submit documentation that a pre-filing meeting was requested as a component of its certification request when EPA is acting as the certifying authority (or where a state or tribe does not have certification request requirements), unless a pre-filing meeting request has been waived. In light of this requirement, EPA recommends that pre-filing meeting requests to the Agency be submitted in writing. Second, the Agency recommends that project proponents include the following information, as available, in any written request for a pre-filing meeting with EPA:

1. A statement that it is ''a request for CWA section 401 certification pre-filing meeting,''
2. The name of the project proponent and appropriate point of contact,
3. The name of the tribe or jurisdiction for which EPA is serving as the certifying authority,
4. The planned project location (including identification of waters of the United States into which any potential discharges would occur),
5. A list of any necessary licenses/permits (*e.g.,* state permits, other Federal permits, etc.),
6. The project type and a brief description of anticipated project construction and operation activities, and
7. The anticipated start work date.

EPA is requesting comment on whether it should define ''applicable submission procedures'' for itself in regulatory text, or only provide recommended procedures in the final rule preamble and future guidance. Additionally, the Agency is requesting comment on whether it should define ''applicable submission procedures'' in regulatory text for all certifying authorities, and if so, what those ''applicable submission procedures'' should include (*e.g.,* the items listed above for pre-filing meetings with EPA, and/or other items). The Agency also requests comment on the proposed minimum timeline between the submission of a pre-filing meeting request and certification request. If a requirement to submit a pre-filing meeting request remains in the final rule and ''applicable submission procedures'' remains undefined, EPA intends to develop its own recommended procedures for pre-filing meeting requests and will make those procedures available to the public during the implementation of any final rule. These recommendations will reflect some of EPA's own procedures when the Agency is the certifying authority, which are described, in part, above.

The Agency is also proposing to provide certifying authorities with the flexibility to waive or shorten the pre-filing meeting request requirement. As indicated in pre-proposal input, all projects do not necessarily require early engagement between the project proponent and certifying authority. For example, less complex, routine projects may not necessitate the same level of early engagement as a large, complex project. The Agency's view is that the proposed requirement to submit a pre-filing meeting request is responsive to stakeholder concerns and suggestions mentioned above about the need for early engagement between the project proponent and a certifying authority. Additionally, the Agency recognizes that states and tribes are in the best position to determine whether a particular project (or class of projects) would benefit from such early coordination. Accordingly, this proposed requirement includes a waiver provision that reflects both cooperative federalism principles and the reality that not every project will benefit from a pre-filing meeting. The Agency recommends that certifying authorities clearly communicate to project proponents their expectations for pre-filing meetings and requests for pre-filing meeting waivers (*e.g.,* whether they may grant waivers, either categorically or on an individual basis, and any procedures and deadlines for submission of requests and the grant of waivers) so that project proponents may clearly and efficiently engage in the certification process. EPA is requesting comment on whether the project proponent should have the opportunity to participate in determining the need for a pre-filing meeting request. For example, should there be a process for the project proponent to ask the certifying authority to waive the pre-filing meeting request requirement?

Like other certifying authorities, EPA would have the discretion to waive the pre-filing meeting request requirement. Generally, EPA expects that it will provide written acknowledgement that the pre-filing meeting request has been received within 5 days of receipt. In its written response, the Agency will also state whether it has determined that the pre-filing meeting will be waived or when (if less than 30 days) the project proponent may submit the certification request. The 2020 Rule provides that the certifying authority is not obligated to grant or respond to a pre-filing meeting request. *See* 40 CFR 121.4(b). The Agency is proposing to delete this provision as unnecessary because the proposed regulatory text at § 121.4 does not compel any action by the certifying authority. Accordingly, the Agency does not find it necessary to expressly reiterate what the certifying authority is not obligated to do. If a certifying authority fails to communicate whether it wants to waive or shorten the pre-filing meeting request requirement, then the project proponent must wait 30 days from requesting a pre-filing meeting to submit its request for certification. The Agency is requesting comment on whether it should exclude any particular project types from the pre-filing meeting request requirement and process. The Agency is also requesting comment on whether it should specify that all certifying authorities should respond with written acknowledgement and determination of the need for a pre-filing meeting and timeline within 5 days of receipt of the pre-filing meeting request, whether it should define the pre-filing meeting waiver process in

regulation (either for EPA or all certifying authorities), or whether it should maintain certifying authority flexibility in setting the process.

The Agency is not proposing to define the pre-filing meeting process, *e.g.,* define meeting subject matter or meeting participants. In the 2020 Rule, the Agency ''encouraged'' but did not require the project proponent and the certifying authority to take certain steps with respect to the pre-filing meeting process. *See* 40 CFR 121.4(c)–(d). The Agency is proposing to remove these recommendations from the regulatory text because (1) they were not expressed as, or intended to be, regulatory requirements and (2) the Agency believes that certifying authorities and project proponents are best suited to determine the optimal pre-filing meeting process on a project-by-project, project type, or general basis. EPA encourages project proponents and certifying authorities to use the pre-filing meeting to discuss the proposed project, as well as determine what information or data is needed (if any) as part of the certification request to enable the certifying authority to take final action on the certification request within the reasonable period of time. During the pre-filing meeting, project proponents could share a description of the proposed project location and timeline, as well as discuss potential impacts from the proposed project to waters of the United States and other water resources. Certifying authorities could use the meeting as an opportunity to provide information on how to submit certification requests (*e.g.,* discuss procedural expectations for a certification request). Certifying authorities should also consider including the Federal agency in the pre-filing meeting process for early coordination. Additionally, the proposed provision provides flexibility for the certifying authority to determine if the pre-filing meeting request is fulfilled by any pre-application meetings or application submissions to the Federal licensing or permitting agency. Generally, EPA recommends that certifying authorities provide clear expectations for pre-filing meetings to ensure they are used efficiently and effectively. As mentioned previously, EPA intends to develop recommended procedures for pre-filing meeting requests to make available to the public during rule implementation.

This proposed approach provides sufficient flexibility (consistent with the Act's cooperative federalism framework) to allow states and tribes to decide which projects (or project categories) require the type of early coordination reflected in a pre-filing meeting. EPA is requesting comment on the proposed approach and whether EPA should define the pre-filing meeting request process in more detail for other certifying authorities (*e.g.,* defining the contents of the pre-filing meeting request). The Agency is also soliciting comment on an alternate approach where the Agency would not include a pre-filing meeting request requirement at all, which some stakeholders supported during pre-proposal outreach.

C. Request for Certification

EPA is proposing that, once a project proponent has requested a pre-filing meeting (unless waived by the certifying authority), the project proponent may submit a certification request in accordance with the certifying authority's applicable submission procedures. Section 401(a)(1) provides that the certifying authority's reasonable period of time to act starts after a certifying authority is in ''receipt'' of a ''request for certification'' from a project proponent. 33 U.S.C. 1341(a).[34] The statute does not define either ''request for certification'' or ''receipt.''

In the 2020 Rule, the Agency defined ''certification request'' for all certifying authorities and asserted that ambiguities in the statutory language had led to inefficiencies in the certification process. 40 CFR 121.5; *see* 85 FR 42243. In particular, the 2020 Rule preamble provided that states and authorized tribes could not rely on state or tribally defined ''complete applications'' to start the certification process, but rather must rely on a certification request as defined in EPA's regulation to initiate the process. The Agency relied on *New York State Department of Environmental Conservation* v. *FERC,* in which the Court of Appeals for the Second Circuit rejected New York's argument that the section 401 process ''begins only once [the state agency] deems an application 'complete' '' and, instead, agreed with FERC that the section 401 review process begins when the state receives a request for certification. 884 F.3d 450, 455 (2d Cir. 2018) (''*NYSDEC*''). The court found that ''[t]he plain language of Section 401 outlines a bright-line rule regarding the beginning of review'' and reasoned that ''[i]f the statute required 'complete' applications, states could blur this bright-line rule into a subjective standard, dictating that applications are 'complete' only when state agencies decide they have all the information they need.'' *Id.* at 455–56.

In *NYSDEC,* the Second Circuit held that the plain language of section 401(a)(1) provides that the reasonable period of time begins after receipt of the request for certification, not when a certifying authority deems the request ''complete.'' The Second Circuit did not, however, decide the separate question of whether EPA or certifying authorities have the authority to establish—in advance of receiving a certification request—a list of required contents for such a request. Accordingly, the court's holding that the reasonable period of time begins after ''receipt'' does not preclude EPA from establishing such a list of minimum ''request for certification'' requirements, or from allowing certifying authorities to add requirements to EPA's list or develop their own lists of request requirements. Because the statute does not expressly define the term ''request for certification,'' EPA and other certifying authorities are free to do so in a manner that establishes—in advance of receiving the request—a discernable and predictable set of requirements for a certification request that starts the reasonable period of time. Establishing such a list of required elements in advance is consistent with the rationale of *NYSDEC* that criticized the state for relying on its ''subjective'' determination that the request was ''complete.''

EPA is proposing minor revisions to the term ''receipt'' to clarify for all stakeholders that the reasonable period of time begins to run after a certifying authority receives a certification request as that request is defined either by EPA or the certifying authority in accordance with its applicable submission procedures. EPA is also proposing to remove the language in the regulatory text at § 121.5(a) that requires a project proponent to submit a certification request to a Federal agency. Section 401(a)(1) requires a project proponent to obtain certification or waiver from a certifying authority, not a Federal agency. The proposed definition of ''receipt'' relies upon the certifying authority, and not the Federal agency, to determine whether the certifying authority has received a request for certification from a project proponent, and as discussed below, the Agency is proposing that the certifying authority sends written confirmation of receipt of the request for certification to the project proponent and Federal agency. Therefore, it is unnecessary for a project

[34] ''If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a *request for certification,* within a reasonable period of time (which shall not exceed one year) after *receipt of such request,* the certification requirements of this subsection shall be waived with respect to such Federal application.'' (emphasis added).

proponent to submit a request for certification to the Federal agency in addition to sending it to the certifying authority.

New to this proposal and as discussed in the next section, EPA is proposing that every ''request for certification'' include a copy of the relevant draft Federal license or permit. EPA intends for this new requirement to ensure that states and tribes have the critical information they need to make a timely and informed certification decision. Accordingly, under this proposal a project proponent cannot submit a request for certification to a certifying authority until after a Federal agency has developed a draft license or permit. In an effort to be further responsive to state and tribal input and the cooperative federalism principles of the Act, unlike the 2020 Rule, EPA is proposing additional contents of a ''request for certification'' in only two circumstances: (1) When EPA acts as the certifying authority and (2) when a state or authorized tribe has not established its own definition of ''request for certification'' in regulation.

1. Minimum Contents of a Request for Certification

Although the proposed rule would require project proponents to initiate engagement with a certifying authority through a pre-filing meeting request, the timing for a certifying authority to review and act on a request for certification for a federally licensed or permitted project starts only when the certifying authority receives a request for certification. EPA and stakeholders alike have recognized the importance of ensuring that adequate information is available to initiate and inform the certification review process, given the relatively limited period of time a certifying authority has to review a project under section 401 (*i.e.,* a ''reasonable period of time'' not to exceed one year). However, EPA recognizes that stakeholders' views vary on whether it is possible to define exactly what information is sufficient or necessary to start the review process.

In 1971, the Agency opted to not define what information, if any, was sufficient to start the review process for all certifying authorities and instead opted to define the information only for EPA when it acts as the certifying authority. 40 CFR 121.22 (2019). As a result, over the last approximately 50 years, many states and tribes established their own requirements for what constitutes a request for certification, also called a ''certification request,'' typically defining it as a so-called ''complete application.'' *See, e.g.,* Cal. Code Regs. Tit. 23, sec. 3835; La. Admin. Code tit. 33, sec. IX–1507; Ohio Admin. Code 3745–32–03. Prior Agency guidance acknowledged this practice. *See* 1989 Guidance, at 31 (April 1989) (''Thus, after taking the federal agencies' regulations into account, the State's 401 certification regulations should link the timing for review to what is considered receipt of a complete application.''); *see also* 2010 Handbook (rescinded) (''States and tribes often establish their own specific requirements for a complete application for water quality certification. . . . The advantage of a clear description of components of a complete [section] 401 certification application is that applicants know what they must be prepared to provide, and applicant and agencies alike understand when the review timeframe has begun.'').

As discussed above, the 2020 Rule defines the term ''certification request'' and the contents of a certification request for all certifying authorities and does not allow certifying authorities to modify or add to these requirements. *See* 40 CFR 121.1(c), 121.5. Generally, these requirements include basic project information such as identifying the project proponent and a point of contact, and identifying the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters. *See id.* at § 121.5.

In pre-proposal outreach for this rule, many certifying authorities expressed concerns about the Agency's decision in the 2020 Rule to provide a complete list of elements that define a certification request. These certifying authorities noted that it is unreasonable to impose a ''one size fits all'' definition on certification requests in light of different state legal requirements (*e.g.,* certification fee requirements, antidegradation laws) or to expect states and tribes to be able to act in a timely, informed manner without more specific information about the proposed project. Although the 2020 Rule did not prohibit certifying authorities from requesting additional information after receiving a request for certification, several certifying authorities argued that the rule's bifurcated approach (*e.g.,* separate lists of Federal and state requirements) created workload issues for certifying authorities and caused confusion among project proponents. At least one certifying authority noted that the 2020 Rule requirements resulted in the state issuing more denials due to project proponents not submitting information necessary for project evaluation. Conversely, several project proponents have argued that a definitive list of contents of a request for certification is essential to provide clarity and consistency for project proponents and certifying authorities.

In this rulemaking, EPA is proposing that a request for certification must in all cases be in writing, signed, dated, and include a copy of a draft license or permit (unless legally precluded from obtaining such a copy) and any existing and readily available data or information related to potential water quality impacts from the proposed project (*e.g.,* Environmental Impact Statement (EIS), water quality data collected by the project proponent). Although this proposed approach defines limited requirements for all certification requests, the Agency is not providing an exclusive definition of request for certification, as it did in the 2020 Rule. Rather, the Agency is proposing to define requirements it views as necessary for an efficient and consistent certification process. The Agency is also proposing to remove the definition of ''certification request'' currently located at 40 CFR 121.1(c), which describes the components of a request for certification, and instead incorporate those same definitional elements directly into the proposed language at § 121.5(a). The Agency believes incorporating the definitional elements into the relevant regulatory section for request for certification will provide greater clarity about the contents of a request for certification.

Because the proposed interpretation of a ''request for certification'' includes submission of the relevant draft Federal license or permit for the proposed project, a project proponent would not be able to submit a request for certification *until* a Federal agency develops and provides it with a draft license or permit for the proposed project. Section 401 does not specify when a request for certification must be submitted in relation to the related Federal licensing or permitting process, nor does the 1971 Rule or 2020 Rule specify when a project proponent must submit a request for certification. Because the text of section 401 does not define the contents of a ''request for certification'' or specify at what point in the Federal licensing or permitting process such a request must or may be submitted to the certifying authority, the statute is ambiguous on both points. As the agency charged with administering the CWA, EPA is entitled to deference for its reasonable interpretation of the statute that a draft license or permit must be included. *See Ala. Rivers Alliance* v. *FERC,* 325 F.3d 290, 296–97 (D.C. Cir. 2003); *NYSDEC,* 884 F.3d at 453, n.33.

As discussed below, EPA's proposed interpretation of the term ''request for certification'' to include a draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project is reasonable because it ensures that the certifying authority has arguably the most important pieces of information—the water quality-related conditions and limitations the Federal agency has preliminarily decided to include in the draft license or permit and information informing that preliminary decision—to evaluate and determine whether it can certify (with or without additional conditions and limitations) that the project will comply with all applicable Federal and state water quality requirements. Without the ability to see and evaluate what conditions and limitations the Federal agency has preliminarily decided to include in its license or permit and the information informing that decision, the certifying authority might be inclined to deny certification as a protective measure against the unknown potential effects from the project or, in the alternative, it may include in its certification potentially unnecessary conditions as a hedge against what the Federal agency may decide to include. Because the certifying authority would have the benefit of seeing the Federal agency's preliminary conditions during its review of the draft license and permit, including its water quality-related limitations and requirements, and any existing and readily available data or information related to potential water quality impacts from the proposed project (such as an EIS), certifying authorities should be able to complete their certification review in less time and deliver certifications with fewer and more targeted and effective conditions. EPA also anticipates that this proposed requirement may reduce redundancies between the certification and Federal licensing or permitting processes. Providing certifying authorities with any existing and readily available data or information related to potential water quality impacts from the proposed project, such as studies or an EIS or Environmental Assessment (EA) or other water quality monitoring data, may reduce the need for duplicative studies and analyses. EPA intends for such ''existing and readily available data or information related to potential water quality impacts from the proposed project'' to include both data or information that informed the Federal agency's development of the draft license or permit as well as any other existing data or information the project proponent may have readily available.

Under this proposal, if a project proponent is legally precluded from obtaining a copy of a draft license or permit, the project proponent would not be required to provide a copy. However, in this instance, a project proponent would still be required to obtain and produce any existing and readily available data or information related to potential water quality impacts from the proposed project, such as a copy of an EIS or EA.

The Agency is aware that some Federal agencies allow project proponents to submit certification requests shortly after a license or permit application is received and before there is a draft license or permit. *See, e.g.,* 18 CFR 5.23 (requiring a FERC hydropower license applicant to provide a copy of a water quality certification or request for certification ''no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis''); 33 CFR 325.2(b)(1) (requiring a Corps district engineer to notify the applicant if they determine that a water quality certification is necessary in processing an application); *cf.* 40 CFR 124.53(a)–(c) (providing for a request for certification to occur either before or after EPA prepares a draft NPDES permit). The Agency is not aware of any regulatory-based reason why Federal licensing or permitting agencies could not manage their internal procedures so that a certifying authority's ''reasonable period of time'' did not begin to run until after it had received a copy of the draft license or permit. Moreover, as discussed above, it is reasonable to start the certification process only after a draft license or permit for the proposed project is available. To be clear, EPA is not proposing to require the project proponent to request certification immediately upon development or receipt of the draft license or permit. For example, the Corps is required to request certification on the nationwide permits (NWPs) when they are renewed every five years. First, the Corps proposes the draft NWPs and takes comment on the proposal, and later finalizes the NWPs after considering public comment. Under this proposed rule, the Corps may request certification on the NWPs after it receives and considers public comment on the proposal but before finalizing the NWPs. In that scenario, the Corps would provide the non-finalized NWP to the certifying authority as the draft permit in its request for certification to satisfy the proposed requirements. EPA encourages project proponents to work with certifying authorities to determine when it is appropriate to submit a request for certification after development of the draft license or permit to allow for an informed and efficient certifying authority review. Furthermore, EPA is not proposing that the Federal agency must solicit public comment on its draft license or permit or create a new regulatory process to engage the public (*e.g.,* notice and comment); rather, the Agency is proposing that the Federal agency provide a draft version of its license or permit for that specific proposed project prior to initiating the certification process, for the limited purpose of helping the certifying authority reach a proper decision on the request for certification. EPA is requesting comment on whether the Federal agency, as opposed to the project proponent, should provide a copy of the draft license or permit to the certifying authority when it is not otherwise already publicly available.

The Agency is not proposing to require that the project proponent submit a *final* license or permit in its certification request because a final Federal license or permit may not be issued until *after* a certification or waiver is obtained by the project proponent. 33 U.S.C. 1341(a)(1) (''No license or permit shall be granted until certification required by this section has been obtained or has been waived as provided in the preceding sentence.'') Therefore, requiring a copy of the final license or permit to initiate the certification process would be inconsistent with the plain language of section 401.

The Agency is requesting comment on its proposed approach. The Agency is also requesting comment on an alternative approach, under which a project proponent may submit either a copy of its officially submitted license or permit application or a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project.

2. Additional Contents in a Request for Certification

As discussed above, the Agency is proposing that every request for certification include a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project. The Agency is also proposing to identify a set of additional contents that a project proponent must include in a request for certification when EPA acts as the

certifying authority. The Agency is also proposing that the same set of additional contents would be required in each request for certification to a state or authorized tribe that has not established its own definition of a ''request for certification'' under state or tribal law. These additional contents would not apply where a state or authorized tribe has established its own list of requirements for a request for certification. As discussed above, this proposed approach contrasts with the approach taken in the 2020 Rule, which defines the contents of a certification request for all certifying authorities. However, it is a reasonable—and more flexible—approach to defining the term ''request'' and consistent with *NYSDEC.* That decision holds that the reasonable period of time begins after receipt of a request for certification and not when a state deems it ''complete;'' it does not preclude EPA or other certifying authorities from defining—in advance—those contents a certification request must contain. As discussed below, this approach is consistent with stakeholder input and the cooperative federalism principles central to section 401 and the CWA.

The Agency agrees it is important for project proponents to have clarity and certainty during the certification process. In order to effectuate Congress' goals for section 401 in the limited amount of time provided by the Act, it is reasonable that certifying authorities should be able to define what information, in addition to a draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project, is necessary to make an informed decision regarding protecting their water quality from adverse effects from a federally licensed or permitted activity. *See* discussion in Section IV.A in this preamble on the legislative history of section 401. This approach will allow certifying authorities to act on certification requests in a timely and informed manner, while providing project proponents with clarity regarding expectations for the certification process. Pre-proposal input on this rulemaking revealed that defining an exclusive list of components for certification requests for all certifying authorities would not necessarily result in a more efficient or timely process. As noted above, several stakeholders asserted that the 2020 Rule led to workload challenges, general confusion for project proponents, and, in at least one state, an increase in denials. The Agency's proposed approach here will allow for a transparent and timely process that respects the role of state and tribal certifying authorities under the cooperative federalism framework of section 401.

First, this proposed approach will reduce project proponent confusion. In all instances, the proposed rule defines the term ''request for certification'' to include a copy of a draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project. It then defines additional contents that a certification request must include when EPA acts as a certifying authority or where a state or authorized tribe does not define a certification request in its regulations. Providing a defined list of additional contents for a certification request where EPA acts as a certifying authority, or where a state or tribe does not have a defined list in regulation, will provide project proponents with clear expectations for starting the process. Implicit in this requirement is an understanding that certifying authorities that wish to define their own additional requirements for a certification request have the authority to do so in regulation. Additionally, this proposed approach should be familiar to project proponents who would have followed specific requirements established by states and tribes during the last approximately 50 years. The proposed approach also addresses project proponent concerns about certifying authorities that, in the past, may have unexpectedly required additional information from the project proponent to satisfy the request for certification requirement before starting the clock on the ''reasonable period of time.'' Under the approach EPA proposes here, the reasonable period of time starts after receipt of a ''request for certification,'' which is defined to mean a request that contains the contents required by EPA's proposed regulations and any additional state or tribal requirements.

Second, this approach will allow certifying authorities to act on certification requests in a more efficient manner. The Agency generally agrees with stakeholders that the Agency cannot tailor the requirements of a certification request to fit every project or state or tribal law. This proposed approach recognizes the importance of ensuring that states and tribes are empowered to determine what information is necessary to initiate the certification process. Although this proposed rule does not preclude certifying authorities from asking for more information once they receive a certification request and the reasonable period of time begins, allowing states and authorized tribes to define additional contents of a certification request may reduce the need for such additional requests.

Although the Agency is proposing to allow states and authorized tribes to define their own additional requirements for a certification request, the proposed approach provides a clear backstop for those states or authorized tribes who do not choose to define any additional requirements in regulation. The Agency expects that those states and authorized tribes who choose to define additional contents for a certification request would do so clearly enough to provide project proponents with full transparency as to what is required. As discussed above, some certifying authorities rely on a ''complete application'' to start the certification review process. In the Agency's view, a state requirement for submittal of a complete application, when the contents of such complete application are clearly defined in regulation, will not necessarily lead to a ''subjective standard.'' *NYSDEC,* 884 F.3d at 455–56. In fact, the Agency observes that the use of a ''completeness'' standard for applications or similar documents is not a novel concept in CWA implementing regulations.[35] Both EPA and the Corps have developed regulations setting out requirements for ''completeness'' or ''complete applications'' to initiate the permitting process. *See* 40 CFR 122.21(e) (describing ''completeness'' for NPDES applications); 33 CFR 325.1(d)(10) (describing when an application is deemed ''complete'' for section 404 permits). Neither CWA section 402 or section 404 uses the word ''complete'' to modify the term ''application'' in the statute, yet the agencies have reasonably interpreted the term ''application'' in those contexts to allow for a ''completeness'' concept that provides a clear and consistent framework for stakeholders involved in the section 402 and 404 permitting processes. The Agency is unaware of significant issues with the use of ''complete applications'' in either the section 402 or section 404 permitting processes or a concern that it has led to a ''subjective standard.''

The Agency is requesting comment on this proposed approach, including any examples or data about state or tribal certification request practices, including

[35] The use of ''complete'' applications is also applied in other Federal environmental realms (*e.g.,* the Safe Drinking Water Act, the Clean Air Act). *See, e.g.,* 40 CFR 144.31, 40 CFR 51.103, appendix V to part 51.

a requirement for a ''complete request,'' that may have delayed the certification process. The Agency also requests comment on examples or circumstances where a certifying authority has applied a subjective or open-ended definition of ''complete application'' to certification requests, including examples of such in certifying authority regulations. EPA is also seeking comment on whether it should take an alternate approach whereby the Agency would define the minimum additional components of a certification request for all certifying authorities and if so, what those minimum additional components should include (*e.g.,* the minimum additional components proposed to apply to EPA when it acts as a certifying authority, as discussed below).

The Agency is proposing to require that a certification request made to EPA, or to states or tribes without their own definitions of ''request for certification'' as discussed above, include five additional components. As discussed below, these five components contain some similarities to the 1971 Rule, with revisions to provide further clarification and efficiency for project proponents and EPA when it acts as a certifying authority and when a state or authorized tribe has not established its own definition of ''request for certification.''

As stated above, the statute does not define the contents of a ''request for certification'' to EPA, nor does the legislative history discuss these components. The 1971 Rule required project proponents to submit a signed certification request with ''a complete description of the discharge involved in the activity'' to EPA when it acts as the certifying authority. 40 CFR 121.22 (2019). Specifically, the 1971 regulation required project proponents to include five mandatory components to provide a ''complete description of the discharge.'' *Id.*

The 2020 Rule precludes state or tribal definitions of what must be included in a ''certification request.'' Instead, it provides a general definition of ''certification request'' applicable to all certifying authorities and two different lists of documents and information that must be included in all certification requests: one list for individual licenses and permits and a separate list for the issuance of a general license or permit. 40 CFR 121.5; *see also* 85 FR 42285. The preamble asserted that these were objective components that would not ''require subjective determinations about whether the request submittal requirements have been satisfied.'' 85 FR 42246. The nine components for a certification request on an individual license or permit are similar to the 1971 Rule, with additional components that required project proponents to include documentation of a pre-filing meeting request, a list of other project authorizations, and attestations regarding the contents of the request and that a request was being submitted. *Id.* at 42285.

Prior to the 2020 Rule, some states and authorized tribes established their own requirements for a certification request that included more information than the 2020 Rule. In pre-proposal outreach for this rulemaking, several certifying authorities noted that the 2020 Rule's list of components for a certification request failed to account for information that may be required to comply with state public notice requirements [36] and state antidegradation policies. As a result, these certifying authorities asserted that the list limited their ability to engage in robust, meaningful public engagement on certification requests or ensure that a project would comply with EPA-approved water quality standards.

As noted above, although the Agency is proposing that all requests for certification must include a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project, the Agency is declining to define the additional contents of a certification request for those states or authorized tribes who have regulations that identify the contents of a certification request because it is difficult to tailor the contents at a national level to fit all state and tribal laws and regulations. However, EPA is proposing to define additional contents of a certification request for EPA when it acts as a certifying authority *and* for states or authorized tribes who do not have regulations on the components of a certification request. EPA is proposing that a certification request to EPA when it acts as the certifying authority, or to a state or tribe who does not have regulations on the components of a certification request, must also contain the following five components, if not already included in the draft license or permit:

1. The name and address of the project proponent;
2. The project proponent's contact information;
3. Identification of the applicable Federal license or permit, including Federal license or permit type, project name, project identification number, and a point of contact for the Federal agency;
4. Where available, a list of all other Federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed activity and current status of each authorization; and
5. Documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission requirements, unless a pre-filing meeting request has been waived.

Like the 1971 Rule and 2020 Rule, the Agency proposes to require basic background information about the project proponent, including name, address, and contact information. Consistent with the definition for ''project proponent'' proposed at § 121.1(j), this information may include the name, address, and contact information for a project proponent's agent or contractor, where relevant, in addition to the primary project proponent. This additional contact information is important for the Agency to ensure that the appropriate representatives are aware of the certification requirements and can be contacted throughout the certification process. The proposed rule also requires project proponents to identify the Federal license or permit for which they are seeking certification, including information that identifies the license or permit type, name, and number, as well as a point of contact at the respective Federal licensing or permitting agency. Similar to the 2020 Rule, the Agency also proposes to require that the project proponent provide a list of other authorizations that are required for the proposed activity and the current status of such authorizations, where applicable. This requirement will allow the Agency to assess how water quality impacts may be addressed through other Federal, state, or local authorizations and potentially reduce redundancies or inconsistencies between the certified license or permit and other authorizations. When the project proponent is a Federal agency seeking certification, the Agency does not expect the Federal agency to be able to produce such a list. Typically, when a Federal agency seeks certification, it is seeking certification on general licenses or permits that would be used by future project applicants. Therefore, at the time of the request for certification, the Federal agency is likely unable to provide any information on which authorizations, if any, are required for such a future project. Similar to the 2020 Rule, the Agency also proposes to

[36] CWA section 401(a)(1) states that a ''State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it.''

require a project proponent to submit documentation that the proponent requested a pre-filing meeting, unless a pre-filing meeting request has been waived. The documentation should be in writing, such as a copy of the email requesting the pre-filing meeting. As discussed in section V.B in this preamble, a certifying authority may waive the requirement for a pre-filing meeting request. In that event, the project proponent would not need to produce documentation of a pre-filing meeting request.

The Agency is not proposing to retain the contents of the 2020 Rule at § 121.5(b)(4) and (5) and (8) and (9); the 1971 Rule also contained similar contents to § 121.5(b)(4) and (5). *See* 40 CFR 121.22(b)–(c), (e) (2019). Section 121.5(b)(4) and (5) are unnecessary since the proposed rule requires a project proponent to provide a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project in its request. The Agency also finds it unnecessary to retain the requirements at § 121.5(b)(8) and (9). EPA included the component at § 121.5(b)(8) ''to create additional accountability on the part of the project proponent to ensure that information submitted in a certification request accurately reflects the proposed project.'' 85 FR 42245 (July 13, 2020). EPA is unaware of any issues or concerns that project proponents will not provide accurate information in the request for certification without such attestation. Furthermore, the proposed contents for a request for certification include a copy of the draft license or permit, which presumably incorporates accurate information about the proposed project. Additionally, it is unnecessary for a project proponent to provide specific language explicitly requesting certification because a project proponent is required to submit a request for certification as defined in this proposal. Submitting a request for certification as defined in this proposal should be a clear indication to the certifying authority that the project proponent is seeking certification. Although the Agency is defining the additional components of a certification request when it acts as a certifying authority, this does not preclude EPA from asking for additional information after a certification request is submitted, if the Agency determines additional information is necessary to inform its decision-making on a request for certification.

The Agency is proposing to require a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project in all requests for certification of both individual and general licenses and permits. Additionally, the Agency is proposing to require that any additional requirements for a request for certification apply to both requests for individual and general licenses or permits. Unlike the 2020 Rule, the Agency is not proposing to retain a separate list of additional requirements for general licenses and permits. *See* 40 CFR 121.5(c). In the 2020 Rule, EPA introduced a separate list of contents for a request for certification on the issuance of a general license or permit ''to account for the distinctions between issuing a general license or permit and issuing a license or permit for a specific project, with respect to the available information at the time of certification.'' 85 FR 42281 (July 13, 2020). However, EPA does not think there are any information needs beyond the proposed additional requirements unique or specific to a general license or permit. EPA is requesting comment on whether there are such different needs and whether it should create a separate list of additional requirements for general licenses or permits.

EPA is requesting comments on its proposed list of additional components for a certification request when EPA acts as the certifying authority, or where a state or tribe does not define such additional requirements in regulation. Additionally, the Agency is requesting comment on the components as they would apply to state and authorized tribal certification requests, including where available, citations to existing regulations or any data on the time it takes project proponents to comply with these requirements.

The Agency also requests comment on an alternative approach where the project proponent would be required to submit (1) a Federal license or permit *application* instead of a copy of the draft license or permit, (2) any existing and readily available data or information related to potential water quality impacts from the proposed project, and (3) an additional set of components. Under this alternative approach, the project proponent would be required to submit ''proposed activity information'' with six components, including the following:

1. A description of the proposed activity, including the purpose of the proposed activity and the type(s) of discharge(s) that may result from the proposed activity;
2. The specific location of any discharge(s) that may result from the proposed activity;
3. A map and/or diagram of the proposed activity site, including the proposed activity boundaries in relation to local streets, roads, highways;
4. A description of current activity site conditions, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation;
5. The date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) on which any discharge(s) will take place; and
6. Any additional information to inform whether any discharge from the proposed activity will comply with applicable water quality requirements.

This alternative additional information would incorporate some of the information requirements from the 1971 Rule and 2020 Rule and add other items to reflect the additional information that the Agency views necessary to initiate its analysis of a certification request on a Federal license or permit application.

EPA is also proposing to make conforming changes to the part 124 regulations governing the contents of a request for certification of EPA-issued NPDES permits. EPA is proposing to delete 40 CFR 124.53(b), which provides that when EPA receives a permit application without certification, EPA shall forward the application to the certifying authority with a request that certification be granted or denied. EPA is proposing to delete § 124.53(b) because this provision allows a request for certification to precede development of a draft NPDES permit, which is inconsistent with the approach proposed at § 121.5(a). It is worth noting that although § 124.53 currently allows for a request for certification on a permit application, EPA typically requests certification on draft NPDES permits.

EPA is also proposing to delete 40 CFR 124.53(c), which identifies the required contents of a request for certification of an EPA-issued NPDES permit (if certification has not been received by the time the draft permit is prepared). EPA is proposing to delete § 124.53(c) because EPA intends that all requests for certification—including all requests for certification on EPA-issued NPDES permits—follow the regulations proposed at § 121.5. The list of contents at § 124.53(c) differs significantly from the list of contents proposed at § 121.5(c). Further, unlike proposed § 121.5(b), § 124.53(c) is unclear regarding whether requests for

certification on EPA-issued NPDES permits must follow state regulations regarding the contents of a request for certification. Also, as explained at the end of Section V.D.2 of this preamble, the statement required at § 124.53(c)(3) regarding the reasonable period of time is not consistent with the approach to the reasonable period of time proposed at § 121.6.

3. Defining ''Receipt'' of a Request for Certification

EPA is also proposing to define the term ''receipt'' to clarify that the reasonable period of time begins on the date that a certifying authority receives a certification request as defined by this proposal, with any additional components identified by the certifying authority in its regulations, and in accordance with its applicable submission procedures. The statute does not define the term ''receipt of such request'' nor does it define how a certification request must be received by a certifying authority. The 1971 Rule does not address or define the term ''receipt'', however, the Agency opted to define the term in the 2020 Rule. 40 CFR 121.1(m). The 2020 Rule defined the term ''receipt'' as ''the date that a certification request is documented as received by a certifying authority in accordance with applicable submission procedures.'' *Id.* In implementation of the 2020 Rule, there was some confusion regarding whether it was the Federal agency's or certifying authority's responsibility to determine that a certification request, as defined by the 2020 Rule, was received. The proposed definition in this proposal clarifies that receipt occurs when the certifying authority receives a certification request that meets its definition for a certification request and complies with applicable submission procedures.

First, the proposed definition of ''receipt'' acknowledges that a request for certification may largely be defined by the certifying authority. As discussed above, the Agency is proposing to require a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project in all requests for certification, but only require additional components in a request for certification when EPA acts as the certifying authority, or where a state or authorized tribe does not define a certification request in its own regulations. Beyond these proposed Federal regulatory requirements, states and authorized tribes remain free to identify their own additional contents of a request for certification under state or tribal law.

Second, the proposed definition of ''receipt'' requires a certification request to be submitted in accordance with the certifying authority's applicable submission procedures. Applicable submission procedures describe the manner in which a certifying authority will accept a certification request, *e.g.,* through certified mail or electronically. The Agency understands that certifying authorities may have different procedures for receiving certification requests (*e.g.,* receiving certification in different formats or requiring the payment of fees), and as such, is not defining a set of standard applicable submission procedures. However, EPA encourages certifying authorities to make their applicable submission procedures publicly available and, where possible, to discuss these procedures at pre-filing meetings. EPA is requesting comment on whether it should define applicable submission procedures.

The statute further provides that the reasonable period of time begins ''after receipt of such request.'' 33 U.S.C. 1341(a)(1). The Agency interprets this to mean that the reasonable period of time begins on the date that the certifying authority receives a certification request that meets the proposed rule's requirements for a certification request, includes any additional certification request components identified in the certifying authority's regulation, and is delivered in accordance with the certifying authority's applicable submission procedures. *See* proposed § 121.6(a). The Agency's proposed rulemaking allows the certifying authority the opportunity to confirm that it received a request for certification consistent with this proposal, its additional requirements, and in accordance with its applicable submission procedures. The Agency is proposing to require the certifying authority to confirm in writing for the project proponent and Federal agency the date it received a certification request that meets its definition and is submitted in accordance with its applicable submission procedures. Because the certifying authority must confirm receipt of the request for certification after it receives a request from a project proponent, EPA is proposing to remove the regulatory text at § 121.5(a), which requires a project proponent to submit a certification request to a certifying authority and Federal agency. Similarly, the Agency is also proposing to remove the regulatory text located at § 121.6(b), which requires the Federal agency to communicate the date of receipt of the request for certification, the reasonable period of time, and the date waiver will occur. The certifying authority is responsible for confirming the date of receipt of a request for certification with the project proponent and Federal agency. As discussed in the next section of this preamble, the Federal agency and the certifying authority may collaboratively set the reasonable period of time. As such, it is unnecessary for the Federal agency to communicate the length of the reasonable period of time and date of waiver to the certifying authority. The Agency is requesting comment on whether there should be a specified timeframe for when the certifying authority should send written confirmation to the project proponent and Federal agency of the date of receipt of the request for certification. The Agency is requesting comment on its proposed definition for receipt and the start of the reasonable period of time.

C. Reasonable Period of Time

1. Reasonable Period of Time Determination

Under section 401, when a certifying authority receives a request for certification, the certifying authority must act on that request within a ''reasonable period of time (which shall not exceed one year).'' 33 U.S.C. 1341(a)(1). The proposed rule provides Federal agencies and certifying authorities with the ability to jointly set the reasonable period of time, provided the reasonable period of time does not exceed one year from the receipt of the request for certification. Additionally, after the reasonable period of time is set, the Federal agency and certifying authority may agree to extend the reasonable period of time, provided that it does not exceed one year from receipt.

Section 401(a)(1) provides that a certifying authority waives its ability to certify a Federal license or permit if it does not act on a certification request within the reasonable period of time. 33 U.S.C. 1341(a)(1) (''If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.''). Other than specifying its outer bound (one year), the CWA does not define what length of time is ''reasonable.'' The 1971 Rule reiterated that a certifying authority would waive its opportunity to certify if it did not act within ''a reasonable period of time''

and provided that: (1) the Federal licensing or permitting agency determines the length of the reasonable period of time, and (2) the reasonable period of time ''shall generally be considered to be six months, but in any event shall not exceed one year.'' *See* 40 CFR 121.16(b) (2019).

The 2020 Rule provides that the Federal agency sets the reasonable period of time and defined a process for how it should be determined. *See* 40 CFR 121.6. This process specifies when a Federal agency must communicate the reasonable period of time to the certifying authority and identifies factors that the Federal agency must consider when setting the reasonable period of time. *See id.;* 85 FR 42259–60 (July 13, 2020). The 2020 Rule does not maintain the 1971 Rule's six-month default and reiterates that the reasonable period of time could not exceed one year from receipt of the certification request. 40 CFR 121.6. The 2020 Rule also defines the term ''reasonable period of time'' as the length of time, which is determined in accordance with § 121.6, during which the certifying authority may act on a request for certification. 40 CFR 121.1(l).

Some Federal agencies have promulgated regulations describing a reasonable period of time for section 401 certification in relation to those agencies' licenses or permits. For example, FERC has explicitly defined the ''reasonable period'' for certifying authority action under section 401 to be one year. *See* 18 CFR 4.34(b)(5)(iii), 5.23(b)(2), 157.22(b). The Corps has routinely implemented a 60-day reasonable period of time for section 401 decisions commencing when the certifying authority receives a section 401 certification request. *See* 33 CFR 325.2(b)(1)(ii).[37] EPA has established a 60-day reasonable period of time for certifying authorities to act on requests for certifications for draft NPDES permits. *See* 40 CFR 124.53(c)(3).

While project proponents generally supported the reasonable period of time provisions in the 2020 Rule, most states, tribes, and non-governmental organizations expressed concern with various aspects of its provisions. Many states and tribes expressed concern that the Federal agency is afforded the sole authority to set the reasonable period of time, and some recommended that the certifying authority alone should be able to determine the reasonable period of time. Some stakeholders suggested that a rule replacing the 2020 Rule should at least require the Federal agency and certifying authority to collaborate and agree on the reasonable period of time. Some certifying authorities also pointed out that short reasonable periods of time (*e.g.,* 60 days) do not allow the state or tribe sufficient time to fulfill certain state or tribal law requirements, such as public notice requirements, or allow them to obtain all the information they need about a project to make an informed certification decision. As a result, these certifying authorities asserted that for complex projects, their only realistic options are to waive or deny certification. EPA expressed similar concerns in its notice of intent to revise the 2020 Rule. *See* 86 FR 29543 (June 2, 2021) (''Among other issues, EPA is concerned that the rule does not allow state and tribal authorities a sufficient role in setting the timeline for reviewing certification requests. . . .'').

This proposed rulemaking not only affirms and clarifies that—consistent with the statutory text—the reasonable period of time may not exceed one year from receipt of the certification request, but it also proposes that the Federal agency and certifying authority collaboratively set the reasonable period of time on a project-by-project or project type basis (*e.g.,* through development of procedures and agreements), provided that it does not exceed one year. Under this proposal, if the Federal agency and certifying authority do not agree upon a reasonable period of time, the default reasonable period of time would be 60 days from the receipt of the request for certification. The proposed rulemaking also allows for extensions of the reasonable period of time under certain circumstances. Additionally, the Agency is proposing to remove as unnecessary the definition for ''reasonable period of time,'' currently located at § 121.1(l). Like that definition, the proposed language in § 121.6(b) itself provides that the reasonable period of time is the time during which the certifying authority must act on a request for certification. As a result, the Agency finds it duplicative and unnecessary to include a separate definition for the term ''reasonable period of time.''

EPA understands that, in most cases, acting within the reasonable period of time is not a major issue for most certifying authorities. Several stakeholders noted in pre-proposal input that the majority of section 401 certifications are issued in well under a year. *See* Economic Analysis for the Proposed Rule (based on pre-proposal input and website information, most states issue certification decisions in 60–90 days); *see also* 85 FR 42215 (July 13, 2020) (''EPA acknowledges that [] many certifications reflect an appropriately limited interpretation of the purpose and scope of section 401 and are issued without controversy . . . .'').

However, a too short or inflexible reasonable period of time can present a major issue in certain circumstances, *e.g.,* for complex, multi-jurisdictional projects, and in jurisdictions with longer public notice requirements. In pre-proposal input, several certifying authorities said they needed more (rather than less) time to make certification decisions due to a lack of necessary information from project proponents. *See also* Economic Analysis for the Proposed Rule (noting that some pre-proposal input revealed that project size, project complexity, sufficiency of project proponent information, and public notice processes impacted whether additional time was necessary). Several stakeholders recommended that EPA establish a default reasonable period of time of one full year.

The collaborative approach EPA is proposing (*i.e.,* the Federal agency and certifying authority jointly set the reasonable period of time with a default of 60 days if an agreement is not reached) differs from the approach in both the 1971 Rule and the 2020 Rule where the reasonable period of time is determined by the Federal agency. *See* 40 CFR 121.16(b) (2019) and 40 CFR 121.6(a). Such an approach is not compelled by the statutory text because CWA section 401(a)(1) is silent regarding who, if anyone, determines the reasonable period of time. Nor does it say that the Federal agency is the only entity that may establish the reasonable period of time. Given that statutory ambiguity, EPA has flexibility under *Chevron* to establish regulatory provisions regarding the establishment of a reasonable period of time. *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984).

EPA is proposing to provide Federal agencies and certifying authorities with an opportunity to collaboratively set the reasonable period of time, in lieu of relying on a regulatory default of 60 days. Under this approach, Federal agencies and certifying authorities can offer each other their expertise relevant to determining what period of time is reasonable. Federal agencies are in the best position to opine on timing in relation to their Federal licensing or permitting process. Likewise, because certifying authorities regularly issue their own permits for activities that may impact water quality (*e.g.,* NPDES

[37] *But see* U.S. EPA and Department of the Army, Clean Water Act Section 401 Certification Implementation Memorandum (August 19, 2021) (interim joint guidance from EPA and Army Corps extending the reasonable period of time to the full statutory year for certain nationwide permits).

permits, above and below ground pipelines, etc.) they also have expertise in the time needed to evaluate potential water quality impacts from federally licensed or permitted activities. Certifying authorities are also best positioned to opine on the impacts of state or tribal law governing the timing of decisions with respect to environmental review and public participation requirements.[38] Given that EPA is proposing to defer to the combined expertise of the Federal agencies and certifying authorities for establishing the reasonable period of time, this proposal does not retain the list of factors that a Federal agency shall consider, under the 2020 Rule at § 121.6(c), when establishing the reasonable period of time. Above all, this proposed approach addresses state and tribal stakeholders' concerns that, under the 2020 Rule, certifying authorities do not have enough influence in determining the length of the reasonable period of time for a particular project.

Under the proposed approach, during the first 30 days after a certifying authority receives a request for certification, the Federal agency and certifying authority would attempt to agree in writing to the length of a reasonable period of time. EPA recommends that the Federal agency and the certifying authority discuss the length of a reasonable period of time at the pre-filing meeting, particularly because the project proponent participates in that meeting and will, therefore, be informed of any reasonable period of time related discussions and decisions. Although the Agency is not proposing to list factors that Federal agencies and certifying authorities must consider when establishing the reasonable period of time, EPA observes that Federal agencies and certifying authorities might consider various factors, such as project type, complexity, location, and scale; the certifying authority's administrative procedures; and the potential for the licensed or permitted activity to affect water quality. Federal agencies and certifying authorities might also elect to establish joint reasonable period of time procedures and agreements through a memorandum of agreement (MOA). Such MOAs could apply to all potential projects or only to projects of a specified type. As discussed further below, such MOAs could also address how and when the agencies might change or extend the reasonable period of time. Alternatively, Federal agencies and certifying authorities might prefer to establish the reasonable period of time on a project-by-project basis. Whichever approach is taken to establish the reasonable period of time, the certifying authority must inform the Federal agency of the date of receipt of a certification request that meets the certifying authority's applicable submission procedures to signal the start of the reasonable period of time clock. *See* proposed §§ 121.5(d), 121.6(a).

As discussed above, if the agencies do not agree on the length of a reasonable period of time within 30 days of receipt of a request for certification, the default reasonable period of time would apply. *See* proposed § 121.6(c) This default approach obviates the need for a dispute resolution process in the event the certifying authority and Federal agency are not able to agree on the reasonable period of time.

EPA believes that a default reasonable period of time of 60 days is a sensible and practical interpretation of the reasonable period of time concept. First, the approach is responsive to stakeholder concerns regarding the 2020 Rule's approach. In pre-proposal outreach, several stakeholders indicated that most delays in the certification process were attributed to lack of information. As discussed in section V.C in this preamble, EPA is proposing that all requests for certification must include a copy of the draft license or permit and any existing and readily available data or information related to potential water quality impacts from the proposed project and provides certifying authorities with the opportunity to define what additional information is needed in a certification request. These components of the proposal would allow certifying authorities to define what information is necessary to initiate a successful certification review process and, thus, address lack of information concerns before the reasonable period of time begins.

It bears noting that the statutory language does not guarantee that the reasonable period of time is one year in all instances. Rather, section 401(a)(1) provides that the reasonable period of time ''shall not exceed one year.'' 33 U.S.C. 1341(a)(1). The words ''shall not exceed'' imply that the reasonable period of time need not be one full year and that a certifying authority should not—in all circumstances—expect to be able to take a full year to act on a section 401 certification request. Under the proposal, the certifying authority could be subject to a shorter than one-year period of time to render its decision, provided that the Federal agency and the certifying authority have agreed to a shorter time, or as discussed above, the agencies rely on the default reasonable period of time. *See Hoopa Valley Tribe* v. *FERC,* 913 F.3d 1099, 1104 (D.C. Cir. 2019) (''[W]hile a full year is the absolute maximum, it does not preclude a finding of waiver prior to the passage of a full year.''). Additionally, the Agency's longstanding 1971 regulations acknowledged that the reasonable period of time may be less than one year. *See* 40 CFR 121.16(b) (2019) (noting that the reasonable period of time is generally six months).

Based on the Agency's nearly 40 years of experience with NPDES permits, the Agency views a 60-day default reasonable period of time as appropriate, provided (as the proposed rule would require) that the reasonable period of time does not commence until after the Federal licensing or permitting agency prepares a draft license or permit. *See* 40 CFR 124.53(c)(3) (providing a default 60-day reasonable period of time for certification on draft NPDES permits). In the NPDES permitting process, draft permits include detailed fact sheets or statements of how permit limits and conditions were developed along with legal and/or scientific justifications, giving certifying authorities relevant data and information to use in their certification process and decision. A default 60-day reasonable period of time is also used for certification requests on section 404 general permits, which occurs after the Corps prepares the draft permit. *See* 33 CFR 325.2(b)(1)(ii).

EPA requests comment on this proposed collaborative approach to setting the reasonable period of time, the 30-day timeframe that the Federal agency and certifying authority would have to determine the length of the reasonable period of time, and the 60-day default. The Agency also requests comments on alternative approaches, such as retaining the approach where the Federal agency is solely responsible for determining the reasonable period of time. Another alternative approach EPA seeks comment on is whether the default reasonable period of time should be shorter or longer depending on when certification is requested during the

[38] Section 401(a)(1) requires a State or interstate agency to establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. However, section 401(a)(1) itself does not set any requirements or time limits on those public notice procedures or how those procedures should be considered when setting the reasonable period of time. EPA is aware that some certifying authorities have public notice procedures that exceed the default reasonable period of time in place for some Federal agencies (*e.g.,* longer than the Corps or EPA's default 60-day reasonable period of time for federally issued CWA section 404 and 402 permits).

licensing or permitting process. For example, if EPA were to decide that a draft license or permit is not a required component of a certification request, should EPA's regulations specify a different and potentially longer default reasonable period of time? Additionally, the Agency is soliciting comment on whether and why the default reasonable period of time should be longer than 60 days (*e.g.,* 120 days, six months, one year). The Agency also requests any information, data, or experiences stakeholders can provide on the length of time it has taken or should take a certifying authority to act on a request for certification.

2. Extensions to the Reasonable Period of Time

The proposed rule provides that the reasonable period of time may be extended upon written agreement by the certifying authority and Federal agency, in consultation with the project proponent. Any extensions shall not exceed one year from the receipt of the certification request. Project proponents would be consulted before any changes to the reasonable period of time, but they would not have the ability to veto final reasonable period of time decisions jointly made by the certifying authority and Federal agency. The statute does not explicitly address extending the reasonable period of time once it has started; nor does it expressly prohibit extending the reasonable period of time as long as the certifying authority ''acts'' within one year from receipt of the certification request. The statute also does not specify who may extend the reasonable period of time or the terms on which it may be extended.

The 1971 Rule was also silent on reasonable period of time extensions. However, several Federal agencies, including EPA and the Corps, established regulations allowing extensions to their default reasonable periods of time. *See* 40 CFR 124.53(c) (allowing for a reasonable period of time greater than 60 days for certification requests on NPDES permits where the EPA Regional Administrator finds ''unusual circumstances''); 33 CFR 325.2(b)(1)(ii) (allowing for a reasonable period of time greater than 60 days for certification requests on Corps permits when the ''district engineer determines a shorter or longer period is reasonable for the state to act.'').

The 2020 Rule explicitly allows certifying authorities to request an extension of the reasonable period of time. 40 CFR 121.6(d). However, only the Federal agency has the power to extend the reasonable period of time, and such extension cannot exceed one year from the receipt of the certification request. *Id.; see also* 85 FR 42260 (July 13, 2020). Under the 2020 Rule, the Federal agency is not required to grant reasonable period of time extension requests. *See* 40 CFR 121.6(d)(2). As a result, Federal agencies may deny those requests even in situations where the certifying authority said it was not able to act within the established timeframe (*e.g.,* where state public notice procedures required more time than the regulatory reasonable period of time). In pre-proposal input, at least one stakeholder observed that a Federal agency's failure to grant an extension request could lead to certification denials. Other stakeholders noted that certifying authorities should have a say in any extensions of the reasonable period of time.

The proposed requirement to include a copy of the draft license or permit (and any existing and readily available data or information related to potential water quality impacts from the proposed project) in the request for certification, and the opportunity to collaboratively set the reasonable period of time, should reduce the need for extensions. However, the Agency recognizes there may be circumstances where the established or default reasonable period of time are not sufficient to allow the certifying authority to complete its review. Accordingly, the Agency is proposing to allow certifying authorities and Federal agencies to jointly extend the reasonable period of time in a written agreement, as long as the project proponent is consulted and the extension does not exceed one year from the receipt of request for certification. *See* proposed § 121.6(d). Consistent with this proposed collaborative approach, the Agency is not proposing to retain the regulatory text located at § 121.6(d) that permits Federal agencies to unilaterally determine whether to extend the reasonable period of time. This proposal does not preclude a Federal licensing or permitting agency from extending the reasonable period of time after a certification has been issued, as long as the extension will not exceed one year from receipt of the request for certification.[39]

The Agency expects that certifying authorities and Federal agencies will collaboratively agree to extensions to the reasonable period of time where needed. For example, the certifying authority and Federal agency could develop in a MOA a process to identify scenarios where changes to the reasonable period of time would be appropriate. Such scenarios may include situations where relevant new information becomes available during the reasonable period of time. EPA notes that the proposed rulemaking promotes early collaboration and pre-filing meetings to allow the Federal agency, certifying authority, and the project proponent to discuss project complexity, seasonal limitations, and other factors that may influence the time needed to complete the certification review. These opportunities may reduce the need to extend the jointly established or default reasonable period of time.

However, the Agency also recognizes that there are circumstances under which the Federal agency *should* extend the reasonable period of time without the certifying authority needing to negotiate an agreement. Such situations, which were not included in the 2020 Rule, include where a certification decision cannot be rendered within the reasonable period of time due to force majeure events (including, but not limited to, government closure or natural disasters). Extensions may also be necessary in jurisdictions where the state or tribal public notice and comment process takes longer than the negotiated or default reasonable period of time. To address pre-proposal input, in contrast to the 2020 Rule, the Agency is proposing to identify a limited list of scenarios that would require the extension of the reasonable period of time. *See* proposed § 121.6(c). If a longer period of time to review the request for certification is necessary due to these circumstances, upon notification by the certifying authority prior to the end of the reasonable period of time, the reasonable period of time shall be extended by the period of time necessitated by public notice requirements or the force majeure event. In its notification, the certifying authority must provide the Federal agency with a written justification for an extension. Ultimately, such extension may not exceed one year from receipt of the request for certification. The justification would describe the circumstances supporting the extension (*i.e.,* accommodating the certifying authority's public notice requirements, government closures, or natural

[39] For example, a certifying authority may submit a new or revised certification decision after it acts on a certification request if the reasonable period of time has not expired and the Federal licensing or permitting agency agrees. *See* U.S. EPA and Department of the Army, Clean Water Act Section 401 Certification Implementation Memorandum (August 19, 2021). In contrast to the certification modification proposed at § 121.10, a new certification decision made within the reasonable period of time will supersede the previous certification decision.

disasters) and does not require Federal agency approval before taking effect. For example, if the reasonable period of time is set to the default 60 days and the certifying authority has a 90-day public notice requirement, then the certifying authority would provide a written justification to the Federal agency prior to the end of the reasonable period of time for an extension to accommodate the public notice requirement. The extended reasonable period of time would take effect upon notification by the certifying authority to the Federal agency.

The proposed approach balances Federal agency and certifying authority equities better than the 1971 Rule and the 2020 Rule by allowing the Federal agency and certifying authority to determine collaboratively whether and how the reasonable period of time should be extended. This approach to extensions aligns with the approach proposed above for joint establishment of the reasonable period of time. It also aligns with cooperative federalism principles central to the CWA. Moreover, it encourages stakeholder cooperation and allows for input from the project proponent. EPA is soliciting comment on this proposed approach. The Agency is also seeking comment on the list of situations described in the regulatory text under which extensions would be automatic, for example, whether other circumstances should be expressly included. Additionally, the Agency seeks comment on any alternative approaches, such as only allowing the Federal licensing or permitting agency to determine any extensions of the reasonable period of time, not requiring the project proponent to be consulted before an extension decision, or not allowing any extensions of the reasonable period of time after the agreed to or default reasonable period of time has been established.

Consistent with this proposal, the Agency is also proposing to delete the part 124 provisions regarding the reasonable period of time for certification on EPA-issued NPDES permits, currently located at 40 CFR 124.53(c)(3), in favor of the reasonable period of time provisions in proposed § 121.6. The approach to the reasonable period of time taken in § 124.53(c) is not fully consistent with the approach proposed at § 121.6. For instance, unlike proposed § 121.6(b), § 124.53(c)(3) does not involve certifying authority collaboration in setting the reasonable period of time. And unlike proposed § 121.6(c), § 124.53(c)(3) does not allow for automatic extensions to accommodate a certifying authority's public notice requirements or force majeure events (instead allowing extensions beyond the default 60 days only if EPA finds ''unusual circumstances'' require a longer time).

3. Withdrawal and Resubmissions of Requests for Certification

EPA is aware that, historically under the 1971 Rule, certifying authorities asked project proponents to withdraw and resubmit their certification requests in order to restart the clock and provide more time to complete their certification review. EPA is also aware that this practice has been subject to Federal court litigation. In this proposed rule, EPA is not taking a position on the legality of withdrawing and resubmitting a certification request. While there may be situations where withdrawing and resubmitting a certification request is appropriate, drawing a bright regulatory line on this issue is challenging, and the law in this area is dynamic. *See Hoopa Valley Tribe* v. *FERC,* 913 F.3d 1099, 1105 (D.C. Cir. 2019) (holding that a repeated, coordinated withdrawal and resubmittal of a certification request resulted in a waiver); *N.C. Dep't of Envtl. Quality (NCDEQ)* v. *FERC,* 3 F.4th 655, 676 (4th Cir. 2021) (finding that the record did not support FERC's determination that the state and project proponent withdrew and resubmitted the certification request in a coordinated fashion). For these reasons, the proposed rulemaking does not take a position on this issue, instead allowing the courts and the different state and tribal certifying authorities to make case-specific decisions or issue their own regulations addressing the practice.

Neither section 401 nor the 1971 Rule specifically address the practice of withdrawing a certification request and submitting a new request to restart the reasonable period of time. On the other hand, the 2020 Rule prohibits the certifying authority from asking the project proponent to withdraw the certification request to reset the reasonable period of time. 40 CFR 121.6(e). In support of that position, the 2020 Rule relies on a broad reading of the D.C. Circuit's decision in *Hoopa Valley Tribe* and asserts that the regulatory text at § 121.6(e) is a ''clear statement that reflects the plain language of section 401 and . . . is supported by the legislative history.'' 85 FR 42261. In that case, which featured highly unusual facts,[40] the court rejected the particular ''withdraw and resubmit''[41] strategy the project proponents and states had used to avoid waiver of certification for a FERC license. 913 F.3d at 1105. The court held that a decade-long ''scheme'' to subvert the one-year review period characterized by a formal agreement between the certifying authority and the project proponent, whereby the project proponent never even submitted a new request, was inconsistent with the statute's one-year deadline. *Id.* Significantly, the court said it was not addressing the legitimacy of a project proponent actually withdrawing its request and then submitting a new one, or how different a new request had to be to restart the one-year clock. *Id.* at 1104.

On the other hand, at least two circuit courts have acknowledged the possibility that withdrawal and resubmittal of a certification request may be a viable mechanism for addressing complex certification situations. *See NCDEQ,* 3 F.4th at 676 (withdrawal and resubmittal appropriate where the certifying authority and project proponent did not engage in a coordinated scheme to evade the reasonable period of time); *NYSDEC,* 884 F. 3d at 456 (noting in dicta that the state could ''request that the applicant withdraw and resubmit the application''). Additionally, EPA's guidance prior to the 2020 Rule acknowledged use of the withdrawal and resubmittal approach, as well as the ''deny certification without prejudice to refile'' approach but noted that ''[t]his handbook does not endorse either of the two approaches . . . .'' 2010 Handbook, at 13, n.7 (rescinded).

During pre-proposal input, many state and tribal stakeholders said they did not support the 2020 Rule's position on the withdrawal and resubmittal process. These stakeholders called for more flexibility in the case of unexpected and significant changes in the project. For the reasons discussed below, EPA is not

[40] The court held that the project proponent and the certifying authorities (California and Oregon) had improperly entered into an agreement whereby the ''very same'' request for state certification of its relicensing application was automatically withdrawn and resubmitted every year for a decade by operation of ''the same one-page letter,'' submitted to the states before the statute's one-year waiver deadline. 913 F.3d at 1104.

[41] Historically, certifying authorities and project proponents have used the ''withdraw and resubmit'' approach for dealing with the one-year deadline for complex projects. There are a multitude of permutations, but the basic idea is that the project proponent would withdraw the certification request and then resubmit a new certification request either immediately or at some later date. The Agency recognizes that there may be legitimate reasons for withdrawing and resubmitting certification requests, including but not limited to the following: a new project proponent, project analyses are delayed, or the project becomes temporarily infeasible due to financing or market conditions.

proposing to retain the regulatory text at § 121.6(e) and instead, proposing not to take a position in this rulemaking on the permissibility of withdrawing and resubmitting a certification request.

As mentioned above, neither the text of section 401 nor *Hoopa Valley Tribe* categorically precludes withdrawal and resubmission of a certification. EPA understands the concern expressed by the D.C. Circuit in *Hoopa Valley Tribe* that prolonged withdrawal and resubmission ''schemes'' might—under certain facts—unreasonably delay and frustrate the Federal licensing and permitting process. Yet, the potential factual situations that might give rise to, and potentially justify, withdrawal and resubmission of a certification request are so varied that the Agency is not confident that it can create regulatory ''bright lines'' that adequately and fairly address each situation. By not taking a regulatory position on this issue, certifying authorities are free to determine on a case-by-case basis whether and when withdrawal and resubmittal of a certification request is appropriate. Such determinations are ultimately subject to judicial review based on their individual facts. The Agency seeks comment on this approach, as well as any alternative approaches, such as EPA establishing regulations specifically authorizing withdrawals and resubmissions in certain factual situations similar (or not) to the circumstances in *Hoopa Valley Tribe.*

D. Scope of Certification

The Agency is proposing to return to the scope of certification standard affirmed by the Supreme Court in *PUD No. 1 of Jefferson County* v. *Washington Dep't of Ecology,* 511 U.S. 700 (1994). In that case, the Court held that section 401 ''is most reasonably read'' as authorizing the certifying authority to evaluate and place conditions on what the Court described as the ''project in general'' or the ''activity as a whole'' to assure compliance with various provisions of the Clean Water Act and ''any other appropriate requirement of State law'' once the predicate existence of a discharge is satisfied. *Id.* at 711–12. The 2020 Rule substantially narrowed the scope of a certifying authority's review of a federally licensed or permitted project. Before the 2020 Rule, a certifying authority could consider whether the federally licensed or permitted ''activity as a whole'' might adversely affect the quality of the state's or tribe's waters. After the 2020 Rule became effective, the certifying authority could only consider potential water quality impacts from the project's point source ''discharges.'' *See* 85 FR 42229 (July 13, 2020). This change was heavily criticized by many states, tribes, and non-governmental organizations as unlawfully narrowing the certifying authorities' scope of review under section 401. In recognition of, and deference to, the central role that states and tribes play in issuing CWA section 401 certifications, EPA is proposing to modify the regulatory text at § 121.3 and reaffirm the broader and more environmentally protective ''activity as a whole'' scope of review that the Supreme Court affirmed in *PUD No. 1.*

The distinction and choice between ''discharge-only'' and ''activity as a whole'' is more than semantic and has significant environmental consequences. The ''activity as a whole'' approach allows states and tribes to holistically consider and protect against impacts to their water resources from the licensed or permitted ''project in general.'' *Id.* at 711. For example, stakeholders have commented that a ''discharge-only'' approach would inappropriately constrain the scope of review and conditions relating to hydroelectric dam facilities. Specifically, stakeholders stated that addressing the water quality impacts of a dam requires a broader review of potential effects beyond those caused only by the discharge(s) from a dam's powerhouse or tailrace. This is because the chemical, physical, and biological integrity of a river is fundamentally altered by the federally licensed ''activity'' or ''project''—not just the discharges from a specific element, *e.g.,* the powerhouse or tailrace. They noted that a dam alters the chemical, physical, and biological integrity of a river by placing a barrier across it, blocking upstream and downstream passage of nutrients and aquatic species, altering the timing and volume of flows, transforming a free-flowing riverine reach into a reservoir, and converting the energy that oxygenates water into electricity.

Stakeholders have asserted that a ''discharge-only'' approach to a hydroelectric dam facility precludes several kinds of potential non-discharge-related conditions a certifying authority might add to its water quality certification, including fish and eel passage facilities (upstream and downstream), fish protection measures concerning intakes, wildlife habitat enhancements, and aquatic resource enhancements. Stakeholders also noted that FERC-licensed hydropower projects can also limit public access to a river, adversely affecting fishing, swimming, boating, and other state-adopted and EPA-approved recreational designated uses. Conditions assuring protection of those designated uses would arguably not be allowed if the scope of review is limited only to impacts from the dam's ''discharges.''

EPA is concerned that many (if not all) of these water quality-related impacts and potential conditions might fall outside the scope of certifying authority review under the 2020 Rule's ''discharge-only'' approach to scope of review. The inability of states and tribes to protect against such impacts could seriously impair their ability to protect valuable water resources. This would be inconsistent with Congress's intention to provide states and tribes with this powerful certification tool to prevent their water resources from being adversely impacted by projects needing Federal licenses or permits.

In addition to narrowing the scope of review from ''activity as a whole'' to ''discharge,'' the 2020 Rule also significantly narrows the ability of certifying authorities, pursuant to section 401(d), to include conditions in their certifications to protect the quality of their waters. Before the 2020 Rule, consistent with EPA's proposed interpretation of the statute, a certifying authority could add conditions to its certification as necessary to assure compliance with the specifically enumerated sections of the CWA and ''any other appropriate requirement of State [or Tribal] law.'' 33 U.S.C. 1341(d). In the 2020 Rule, however, EPA codified a narrow regulatory interpretation of the section 401(d) term ''other appropriate requirements of State law.'' 85 FR 42250 (July 13, 2020). With the 2020 Rule in effect, the certifying authority can only add conditions necessary to assure compliance with those specifically enumerated sections of the CWA ''and state or tribal regulatory requirements for *point source discharges* into waters of the United States.'' 40 CFR 121.1(n), 121.3. In recognition of, and deference to, the central role that states and tribes play in issuing CWA section 401 certifications, EPA is proposing to return to what it now views as the more textually accurate and environmentally protective ''any other appropriate requirement of State [or Tribal] law'' standard for including certification conditions.

As discussed below, the interpretations of section 401's scope of review and conditions EPA is proposing are more closely aligned with the statutory text and goals of section 401 than the interpretations in the 2020 Rule. Consistent with the principles of cooperative federalism that underlie the Clean Water Act and especially section 401, the interpretations the Agency is

proposing would restore the full measure of authority that EPA believes Congress intended to grant states and authorized tribes to protect their critical water resources.

The following sections discuss (1) EPA's longstanding position that CWA section 401 certifications are limited to addressing water quality effects; (2) EPA's decision to reaffirm the Supreme Court's interpretation of the scope of certification in *PUD No. 1* as the ''activity as a whole;'' and (3) EPA's decision to return to a broader definition of ''water quality requirements'' than that adopted in the 2020 Rule.

1. Water Quality Impacts From Federally Licensed or Permitted Projects

The Agency continues to interpret section 401 to provide that, when issuing certifications and conditions, certifying authorities may only consider and address potential water quality effects. The CWA's objective is ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). Among the Act's policy declarations is ''the policy of Congress to recognize, preserve, and protect the primary responsibilities of States to prevent, reduce, and eliminate pollution.'' *Id.* at 1251(b). As discussed in section IV.A in this preamble, Congress intended that section 401 provide states and tribes with a powerful tool to prevent their water resources from being adversely impacted by projects needing Federal licenses or permits. While the text of section 401 does not expressly state that certifications and conditions may only consider and address water quality effects, the courts have consistently clarified that this is so. *See Am. Rivers, Inc.* v. *FERC,* 129 F.3d 99, 107 (2d Cir. 1997) (''Section 401(d), reasonably read in light of its purpose, restricts conditions that states can impose to those affecting water quality in one manner or another.''); *see also PUD No. 1,* 511 U.S. at 711–713 (holding that a state's authority to impose conditions under section 401(d) ''is not unbounded''). This view is also consistent with prior Agency interpretations articulated in the 2020 Rule and prior Agency guidance. *See* 85 FR 42250 (''The scope of a Clean Water Act section 401 certification is limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements.''); 2010 Handbook, at 16 (rescinded) (''As incorporated into the 1972 CWA, [section] 401 water quality certification was intended to ensure that no federal license or permits would be issued that would prevent states or tribes from achieving their water quality goals or that would violate CWA provisions.'').

Accordingly, EPA continues to maintain that it would be inconsistent with the purpose of CWA section 401 to deny or condition a section 401 certification based solely on potential air quality, traffic, noise, or economic impacts that have no connection to water quality. In pre-proposal outreach, it appeared that some stakeholders were confused about whether an EPA proposal to align the scope of review with *PUD No.1* would allow certifying authorities to deny or condition certifications based on potential environmental or societal impacts not related to water quality. It is not the Agency's intention to do so or to include consideration of such non-water quality-related impacts within the proposed ''activity as a whole'' scope of review.

The preamble to the final 2020 Rule identified examples of certification conditions possibly falling outside the water quality-related scope of section 401 review because they did not address water quality impacts, including one-time and recurring payments to state agencies for improvements or enhancements that are unrelated to the proposed federally licensed or permitted project; conditions to address potential non-water quality-related environmental impacts from the creation, manufacture, or subsequent use of products generated by a proposed federally licensed or permitted activity or project; and conditions related only to non-water quality-related impacts associated with air emissions and transportation effects. *See* 85 FR 42230. Subject to a case-by-case review of the particular facts presented by each certification, EPA thinks it reasonable to assume that such non-water quality-related conditions would generally be beyond the scope of section 401.

On the other hand, some conditions that stakeholders have identified as potentially problematic may, in fact, be appropriate as necessary to prevent adverse impacts to a state's or tribe's water quality. Depending on the circumstances, examples of conditions that might be appropriate to include in a state or tribal certification to comply with water quality requirements could be: building and maintaining fish passages (related to protecting designated uses); the construction of public access for fishing (related to protecting recreational/fish consumption designated uses); maintaining minimum flow rates for visual, auditory, and religious experiences (related to protecting designated uses); compensatory wetland and riparian mitigation (related to protecting designated uses and criteria); temporal restrictions on activities to protect sensitive aquatic species (related to protecting designated uses); pre-construction monitoring and assessment of resources (related to protecting designated uses and criteria); habitat restoration (related to protecting designated uses and criteria); construction of recreation facilities to support designated uses (*e.g.,* whitewater release for kayakers, canoe portages, parking spaces) (related to protecting designated uses); tree planting along waterways (related to protecting designated uses and criteria); and spill management and stormwater management plans (related to protecting designated uses and criteria). For these and other potentially qualifying conditions, EPA believes that it is appropriate for the certifying authority to consider the broadest possible range of water quality effects and that the appropriateness of any given condition will depend on an analysis of all relevant facts.

The Agency invites comment on to what extent section 401 certification review and conditions should be limited to potential water quality-related effects or should also consider non-water quality-related impacts.

2. ''Activity as a Whole''

EPA is proposing to return to the ''activity as a whole'' or ''project in general'' scope of certification review and conditions that the Supreme Court affirmed in *PUD No. 1.* Having carefully reviewed the 2020 Rule in light of pre-proposal stakeholder comments, EPA has determined that the ''activity as a whole'' interpretation of scope is more consistent with the statutory text, legislative history, and water quality protective goals of the CWA than the 2020 Rule's ''discharge-only'' approach. The Agency also finds that the more environmentally protective ''activity as a whole'' interpretation of scope is better aligned with the cooperative federalism principles animating section 401.

The first sentence of section 401(a)(1) provides that a certification must be obtained by ''*any applicant* for a Federal license or permit to conduct *any activity* . . . which may result in *any discharge* into the navigable waters.'' 33 U.S.C. 1341(a)(1) (emphasis added). These three italicized words—''applicant,'' ''activity,'' and ''discharge''—are the semantic building blocks used to support two differing interpretations of scope of review. Supporters of the

''discharge-only'' interpretation of scope of review chiefly rely on Congress's use of the word ''discharge'' in section 401(a)(1) in support of the proposition that states and tribes may only consider water quality impacts from the project's discharges when deciding whether to certify or add conditions to federally licensed or permitted projects. EPA disagrees with this overly narrow interpretation. Following its reconsideration of the statutory text, the Agency believes that Congress's use of the words ''applicant'', ''activity'', and ''discharge'' in section 401(a)(1), ''applicant'' in section 401(d), and its failure to use the word ''discharge'' in section 401(d), create enough ambiguity to support an interpretation that certifying authority review, and the ability to impose conditions, extends to the project proponent's ''activity as a whole,'' or in other words, the ''project in general.'' In the 2020 Rule, EPA acknowledged that the statutory language addressing scope of review is ambiguous and subject to interpretation. *See* 85 FR 42232. In light of that ambiguity, EPA now agrees with the Supreme Court in *PUD No. 1* that ''activity as a whole'' is ''a reasonable interpretation of [section] 401.'' *PUD No. 1,* 511 U.S. at 712.[42]

In *PUD No. 1,* the Supreme Court reviewed a water quality certification issued by the State of Washington for a new hydroelectric project on the Dosewallips River. The principal dispute adjudicated in *PUD No. 1* was whether a certifying authority may require a minimum stream flow as a condition in a certification issued under section 401. The project applicant identified two potential discharges from its proposed hydroelectric facility: ''the release of dredged and fill material during construction of the project, and the discharge of water at the end of the tailrace after the water has been used to generate electricity.'' *Id.* at 711. The project applicant argued that the minimum stream flow condition was unrelated to these discharges and therefore beyond the scope of the state's authority under section 401. *Id.*

The Court examined sections 401(a)(1) and 401(d), specifically the use of different terms in those sections of the statute to inform the scope of a section 401 certification. Section 401(a)(1) requires the certifying authority to certify that the discharge from a proposed federally licensed or permitted project will comply with certain enumerated CWA provisions, and section 401(d) authorizes the certifying authority to include conditions to assure that the applicant will comply with those enumerated CWA provisions and '''any other appropriate' state law requirements.'' *Id.* at 700. Emphasizing that the text of section 401(d) ''refers to the compliance of the applicant, not the discharge,'' the Court concluded that section 401(d) ''is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.'' *Id.* at 712.[43] The Court recognized that section 401 placed some bounds on the ''activity as a whole'' scope, noting that a certifying authority ''can only ensure that the project complies with 'any applicable effluent limitations or other limitations under [33 U.S.C. 1311, 1312] or other provisions of the Act,['] 'and with any other appropriate requirement of State law.''' 511 U.S. at 712. The Court found that ''at a minimum, limitations imposed pursuant to state water quality standards adopted pursuant to [section] 303,''—the limitations at issue in *PUD No. 1*—''are 'appropriate' requirements of state law,'' but declined ''to speculate on what additional state laws, if any, might be incorporated by this language.'' *Id.* at 713.

A quarter of a century after *PUD No. 1,* in its 2020 Rule EPA rejected its longstanding ''activity as a whole'' interpretation, affirmed by the *PUD No. 1* majority, in favor of the dissent's ''discharge-only'' interpretation of section 401's scope. The 2020 Rule's interpretation received heavy criticism and was subject to multiple legal challenges. Having now carefully reconsidered the ''discharge-only'' interpretation of scope of review the previous Administration announced in the 2020 Rule, EPA has concluded that the statutory text, legislative history, and goals of section 401 more reasonably support the ''activity as a whole'' standard that was accepted practice for the preceding 50 years.

Congress's 1972 textual revisions to section 21(b) support the ''activity as a whole'' interpretation of scope. At the same time it was revising section 401(a)(1), Congress added section 401(d) that required states to include conditions ''necessary to assure'' that ''any applicant'' will comply with sections 301, 302, 303, 306 and 307 and ''any other appropriate requirement of State law.''[44] Unlike section 401(a)(1), section 401(d) does not use the term ''discharge.'' Use of the word ''applicant'' instead of ''discharge'' in section 401(d) introduced ambiguity as to whether the scope of section 401 review was limited to effects from the discharge alone. In light of this ambiguity, EPA believes it is reasonable to interpret the combined text of sections 401(a)(1) and 401(d) as supporting ''activity as a whole'' as the proper scope of certification. 511 U.S. at 711–712. (''[Section] 401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the existence of the threshold condition, existence of a discharge, is satisfied.''). Because section 401(d) requires that a section 401(a) certification include conditions ''necessary to assure'' the applicant's compliance with the five CWA sections listed in section 401(a)(1) and ''any other appropriate requirement of State law,'' section 401(d) is most reasonably read to require the certifying authority—when it reviews a certification request under section 401(a)(1)—to review the potential water quality impacts from the ''project in general,'' i.e, the ''activity as a whole,'' and not merely evaluate the water quality effects of the potential discharge. This approach is reasonable because it accounts for the fact that the applicant for certification is responsible for a wide variety of activities at the project site that might affect water quality in addition to any potential ''discharge.'' To assure—as it must under section 401(d)—that ''the applicant'' complies with all applicable state or tribal and Federal water quality requirements, the certifying authority must be able to evaluate potential water quality effects from the applicant's ''activity as a whole.''[45]

The text of CWA sections 401(a)(3)–(5) also supports an ''activity as a whole'' interpretation of section 401's scope. Section 401(a)(3) provides that a

[42] The dissent in *PUD No. 1* offered a more limited interpretation of section 401(d)'s scope, stating that ''while [section] 401(d) permits a State to place conditions on a certification to ensure compliance of the 'applicant,' those conditions must still be related to discharges.'' 511 U.S. at 727 (Thomas, J., dissenting with whom Scalia, J., joined).

[43] Without acknowledging that the 1971 Rule was based on an earlier version of the statute, the Court also noted that its interpretation was consistent with EPA's 1971 Rule. *Id.* at 712.

[44] Public Law 92–500, 401, 85 Stat. 816 (1972).

[45] *PUD No. 1* also said its ''activity as a whole'' interpretation was consistent with EPA's 1971 Rule at 40 CFR 121.2(a)(3) (2019) (requiring reasonable assurance that the ''activity'' will not violate applicable water quality standards) and with EPA's 1989 Guidance. It is worth noting, however, that EPA's 1971 Rule pre-dated the 1972 amendments and was based on the language of the 1970 version of the statute which used the word ''activity'' instead of ''discharge.'' While the Court appeared to be unaware of that fact, it is of minor significance because EPA's conclusion that ''activity as a whole'' is the most reasonable interpretation is based on the statutory text and legislative history, not EPA's regulations preceding enactment of the 1972 law.

certification for a facility's *construction* fulfills the section 401 obligations with respect to its operation unless the certifying authority determines there is no longer reasonable assurance of compliance with sections 301, 302, 303, 306 and 307 because of changes in ''(A) the construction and operation of the facility.'' *See* 33 U.S.C. 1341(a)(3). ''Construction and operation of the facility'' is clearly a broader concept than ''discharge.'' In addition, section 401(a)(4) guarantees that the certifying authority has the opportunity ''to review the manner in which the [previously certified] facility or activity shall be operated or conducted'' prior to its initial operation ''for the purpose of assuring that applicable effluent limitations or other limitations or water quality requirements will not be violated.'' *See id.* at 1341(a)(4). If this review results in suspension of the facility's permit, the permit shall remain suspended until notification from the certifying authority that ''there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316 and 1317.'' *Id.* Lastly, section 401(a)(5) provides that any certified Federal license or permit may be suspended or revoked by the Federal licensing or permitting agency ''upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316 and 1317.'' *See id.* at 1341(a)(5). The scope of review employed in each of these subsections is whether there has been compliance by the ''facility or activity'' with the five CWA sections identified in section 401(a)(1), and not merely compliance by the ''discharge.'' Congress's application of this ''facility'' and ''activity'' scope of review in sections 401(a)(3)–(5) is consistent with and supports an ''activity as a whole'' interpretation of sections 401(a)(1) and 401(d).

The legislative history of CWA section 401, and its predecessor section 21(b) of the Water Quality Improvement Act of 1970, also supports the ''activity as a whole'' interpretation of scope. EPA believes that the mere fact that Congress changed a single word ''activity'' to ''discharge'' in section 401(a)(1) of the 1972 Act is not dispositive, or even persuasive, that Congress intended to shrink the scope of review under sections 401(a)(1) and (d) from consideration of water quality effects caused by the ''project in general'' or ''activity as a whole'' to those caused only by the discharge.

It is not obvious from the legislative history that such a significant shift was intended. It is, however, quite clear from the legislative history that, in 1972, Congress thought it was making only ''minor,'' insubstantial changes to section 21(b). The Senate Report stated that section 401 was ''substantially section 21(b) of the existing law.'' S. Rep. No. 92–414, at 69 (1971). *See also* remarks of Sen. Baker: ''Section 21(b), with minor changes, appears as section 401 of the pending bill S.2770.'' 117 Cong. Rec. 38857 (1971). Nowhere in the legislative history is there a statement to the effect that Congress understood it was dramatically shrinking section 401's scope of review to only those water quality effects caused by a potential discharge. To the contrary, the House Report stated that ''[i]t should be clearly noted that the certifications required by section 401 are *for activities* which may result in any discharge into navigable waters.'' H.R. Rep. 92–911, at 124 (1972) (emphasis added). Indeed, in summarizing section 401, Senator Muskie stated that ''[a]ll we ask is that *activities* that threaten to pollute the environment be subjected to the examination of the environmental improvement agency of the State for an evaluation and recommendation before the federal license or permit be granted.'' 117 Cong. Rec. 38854 (1971) (emphasis added). *See also* H.R. Rep. 92–911, at 121 (1972) (stating that ''[t]he term 'applicable' as used in section 401 . . . means that the requirement which the term 'applicable' refers to must be pertinent and apply to *the activity* and the requirements must be in existence by having been promulgated or implemented.'') (emphasis added).

A comparison of section 21(b) and section 401 reveals that the two sections are, indeed, substantially the same. In light of the previously discussed legislative history affirming that the 1972 law was ''substantially'' the same as the 1970 law, EPA does not think it reasonable to assume that Congress intended to make fundamental changes to the scope of the certifying authority's certification review merely by changing a single word (''activity'') in section 401(a) when—at the same time—it added a different and more expansive formulation based on the word ''applicant'' in section 401(d). *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457, 468 (2001) (''Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.'').

Congress's revisions to section 401(a) in the 1977 CWA amendments also suggests it continued to support the application of the broader ''activity'' approach. Legislative history from 1977 states that Congress intended for ''[t]he inserting of section 303 into the series of sections listed in section 401 [ ] to mean that a federally licensed or permitted *activity,* including discharge permits under section 402, must be certified to comply with State water quality standards adopted under section 303.'' H.R. Rep. No. 95–830, at 96 (1977) (emphasis added).

The Agency invites comment on its proposal to readopt the ''activity as a whole'' definition of scope of review under section 401(a)(1) and scope of conditions under section 401(d). The Agency is also seeking comment on whether it should adopt the ''discharge-only'' scope of review announced in the 2020 Rule.

Consistent with the discussion above, the Agency is proposing to define the term ''activity as a whole'' to capture ''any aspect of the project activity with the potential to affect water quality.'' *See* proposed § 121.1(a). This approach provides certifying authorities with the ability to consider any aspect of the federally licensed or permitted activity that may adversely impact water quality. As the stakeholder input described above illustrates, the impacts of a federally licensed or permitted project on a certifying authority's water resources may be caused by aspects of the project's activity in addition to the potential discharge that triggered the need to seek section 401 certification. Accordingly, the Agency's proposed definition for the term ''activity as a whole'' is meant to include all activity at the proponent's ''project in general'' with the potential to affect water quality (*e.g.,* construction and operation of the project or facility). This definition of ''activity as a whole'' is consistent with previously issued EPA guidance, which identified the scope of review as ''all potential water quality impacts of the project, both direct and indirect, over the life of the project.'' *See* 1989 Guidance, at 22 (''[I]t is imperative for a State review to consider all potential water quality impacts of the project, both direct and indirect, over the life of the project.''); *see also* 2010 Handbook, at 17 (rescinded) (''Thus, it is important for the [section] 401 certification authority to consider all potential water quality impacts of the project, both direct and indirect, over the life of the project.'') (citing *PUD No.1,* 511 U.S. at 712 (1994)). The Agency invites comment on its proposed interpretation of the term ''activity as a whole.''

The Agency also understands that, while *PUD No. 1* used the term ''activity as a whole,'' the Court did not offer a

specific definition of that term, specifically what ''activity'' should be examined as a whole. Nevertheless, certifying authorities and Federal agencies have gained significant experience over nearly 50 years implementing an ''activity as a whole'' approach, and EPA believes that certifying authorities and Federal agencies are capable of appropriately delineating the ''activity as a whole'' or the ''project in general'' based on the facts of each situation. EPA is not aware of any cases in which delineation of ''activity as a whole'' has been litigated, provided that the scope of review was limited to water quality. While EPA intends the word ''activity'' in the term ''activity as a whole'' to include all activities of the ''project in general'' that might affect water quality, EPA invites comment on whether EPA should specifically define the term ''activity'' to mean only those activities at the project site that are specifically authorized by the Federal license or permit in question. EPA also invites comment on whether and how the Federal licensing or permitting agency could effectively implement a certification with conditions addressed to impacts from the ''activity as a whole'' if it has authority over only a small part of a larger project. What challenges would be presented to the licensing or permitting authority's ability to administer and enforce its license or permit?

To illustrate, assume there are two hydroelectric facilities on the same river. Facility A has yet to be constructed and may require multiple Federal licenses or permits. It may require a FERC license for its construction and operation, a CWA section 404 permit for dredge and fill activity related to its construction, and a CWA section 402 permit to discharge pollutants during its operation. Facility B, on the other hand, has already been constructed and only needs a CWA section 402 permit to discharge pollutants before it may commence operations. EPA invites comment on whether the same ''activity'' viewed ''as a whole'' should define the scope of review applicable to certifications for both facilities.

With respect to the broad, relatively comprehensive licenses and permits issued by FERC and the Corps for construction and operation of Facility A, the Agency sees little difference in the scope of review and conditions that may be included in certifications issued under either a broad or potentially narrower approach to defining the relevant ''activity.'' That is because their licenses and permits are generally comprehensive enough in what they authorize that there would appear to be few if any significant aspects of a project's activity that fall outside the scope of activities authorized by the Federal license or permit. Accordingly, for these kinds of licenses and permits, EPA believes that any significant potential water quality-related impacts could be addressed by a certification condition on the ''activity'' whether it is construed to be the activities comprising the ''project in general'' or ''the specific activity authorized by the federal license or permit.''

EPA requests comment on whether a different outcome might apply to Facility B. As discussed above, Facility B only needs an NPDES permit to discharge pollutants to commence operations. For purposes of this example, assume EPA will be issuing the NPDES permit because the jurisdiction in which the facility is sited does not have NPDES permit authority. In the case of Facility B, should the scope of the certifying authority's section 401 review for the Federal NPDES permit include the potential for water quality-related impacts from Facility B's ''activity'' broadly defined to include water quality-related impacts from Facility B's entire construction and operation, including aspects previously authorized by a FERC license or CWA 404 permit? Or should the scope of the certifying authority's section 401 review for Facility B's Federal NPDES permit include only those potential impacts caused by Facility B's activity narrowly defined as specifically authorized by the NPDES permit, *i.e.,* the discharge of pollutants like heated water, oil, and grease introduced by the operation of Facility B's turbines, and not include other aspects of Facility B's construction and operation?

As discussed above, the choice of the narrower approach to defining ''activity'' within the context of ''activity as a whole'' may limit the kinds of conditions that may be placed on a project proponent's ''activity'' given that the scope of authorization under a more circumscribed permit, *e.g.,* the NPDES permit for Facility B, would extend to a narrower range of the project proponent's activities, *e.g.,* only the discharge of pollutants and not the other aspects of the dam's operation not regulated under section 402.

3. Water Quality Requirements

Under this proposal, when a certifying authority reviews a federally licensed or permitted activity, it must determine whether the ''activity as a whole'' will comply with ''water quality requirements.'' Logically, the ''activity as a whole'' standard would apply to a certifying authority's evaluation of potential water quality effects under both sections 401(a)(1) and 401(d). This is because the two sections are inextricably linked. Section 401(d) requires a certifying authority to determine whether ''the applicant'' will—without additional conditions—comply with the specified CWA provisions and ''any other appropriate'' requirement of state law. Only if the certifying authority determines pursuant to section 401(d) that adding ''any effluent limitations and other limitations, and monitoring requirements'' to the license or permit will assure that water quality requirements will be met, may the certifying authority grant the certification contemplated by section 401(a)(1). The certifying authority's evaluations and determinations under sections 401(a)(1) and 401(d) do not work together in a harmonious fashion if the statute is interpreted to apply a different scope of review standard to each section.

Because EPA interprets the scope of certification review under sections 401(a)(1) and (d) to be the same, the same ''activity as a whole'' standard applies to a grant of certification, a grant of certification with conditions, and a denial. For example, when a certifying authority determines that it must add conditions under section 401(d) to justify a grant of certification under section 401(a), that is equivalent to deciding that, without those conditions, it must deny certification. The standard for each of the potential certification decisions is therefore essentially the same.

To clarify which provisions of Federal and state law a certifying authority may consider when evaluating and ultimately deciding which action to take on a certification request pursuant to sections 401(a) and (d), the Agency is proposing to define the term ''water quality requirements.'' *See* proposed § 121.1(m). The term ''water quality requirements'' is used throughout section 401, and the term ''any other appropriate requirement of State law'' is used in section 401(d), but neither term is defined in the CWA. The Agency did not interpret the term ''water quality requirements'' in the 1971 Rule, perhaps because the term ''water quality requirements'' was not introduced into section 401 until the 1972 CWA amendments, where it replaced the term ''water quality standards'' throughout the section. *See* Public Law 91–224, 21(b)(1), 85 Stat. 91 (1970); Public Law 92–500, 401, 85 Stat. 816 (1972). Accordingly, the 1971 Rule used the

term ''water quality standards'' consistent with the text of the 1970 statutory version of the certification provision. Similarly, the 1971 Rule did not account for the term ''other appropriate requirement of State law'' since section 401(d) was not introduced until 1972.

The 2020 Rule defines the term ''water quality requirements,'' and subsumes the phrase ''any other appropriate requirement of State law'' into the term ''water quality requirements.'' 40 CFR 121.1(n); *see* 85 FR 42253. Consistent with what EPA characterized as the discharge-only scope of section 401, the preamble to the final 2020 Rule limited ''water quality requirements'' to only the enumerated provisions of the CWA listed in section 401(a)(1) and ''state or tribal regulatory requirements for point source discharges into waters of the United States.'' 40 CFR 121.1(n). Citing Justice Thomas's dissent in *PUD No. 1,* the Agency relied on the principle *ejusdem generis* to argue that the term ''appropriate requirement of State law'' was limited ''only to provisions that, like other provisions in the statutory list, impose discharge-related restrictions.'' 511 U.S. at 728 (Thomas, J., dissenting); 85 FR 42453. As a result, the 2020 Rule significantly narrows the scope of review and ability of certifying authorities to include conditions to protect their water quality.

In proposing the definition of the term ''water quality requirements'' set out in this document, the Agency has reconsidered the 2020 Rule's definition of the term and finds it appropriate to interpret the term in a way that respects what EPA believes is the full breadth of the Federal and state water quality-related provisions that Congress intended a certifying authority to rely upon when developing its certification and conditions. Accordingly, EPA is now proposing to define ''water quality requirements'' to include any limitation, standard, or other requirement under the provisions enumerated in section 401(a)(1), any Federal and state laws or regulations implementing the enumerated provisions, and any other water-quality related requirement of state or tribal law regardless of whether they apply to point or nonpoint source discharges.

The text, purpose, and legislative history of the statute support the proposed interpretation of ''water quality requirements.'' In section 401(d) Congress said that certifying authorities must include conditions in their certifications to assure that any applicant will comply with enumerated provisions of the CWA and ''*any* other appropriate requirement of State law.'' 33 U.S.C. 1341(d) (emphasis added). The word ''any'' is capacious in its scope, literally meaning ''all'' such state law requirements and not just a limited subset, *e.g.,* point source-related requirements. While the word ''appropriate'' arguably provides a limiting principle with respect to which requirements may be considered and applied, the word ''appropriate'' is to be interpreted broadly in light of statute's text and purpose. *Michigan* v. *EPA,* 576 U.S. 743, 752 (2015) (stating that ''appropriate'' is a broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors). In this context, the word ''appropriate'' is more reasonably understood as specifying the ''water quality-related'' nature of such requirements and not their ''point source'' character. This interpretation is consistent with the water quality protection goals of the CWA, as well as the Supreme Court's affirmance of EPA's longstanding interpretation in *PUD No. 1* that water quality certifications and their conditions must assure that the ''activity as a whole''—and not just its point source discharges—does not adversely impact the quality of a certifying authority's waters.

Application of the maxim *ejusdem generis* to limit ''appropriate requirement of State law'' only to those state law provisions that impose discharge-related restrictions is misplaced. The list of CWA provisions referenced in section 401(a)(1), and in section 401(d) by incorporation, includes section 303, which addresses the requirement to adopt water quality standards for a state's waters. This requirement applies to such waters irrespective of the presence of point or nonpoint sources of pollution or pollutants. Moreover, as discussed earlier, even though Congress modified the language of section 21(b) to conform to the revised regulatory approach of the 1972 Act, it is clear from the legislative history that Congress intended new section 401 to be substantially the same as section 21(b) and not at all clear that Congress intended the restrictive reading of ''appropriate requirement of State law'' arguably suggested by use of that maxim.

Congress provided states with the primary role in protecting the Nation's waters from pollution, including pollution from Federal projects, and the phrase ''water quality requirements'' should be interpreted broadly to preserve state authority and further the section's protective goal. *See S.D. Warren,* 547 U.S. at 386 (''State certifications under [section] 401 are essential in the scheme to preserve state authority to address the broad range of pollution . . . .'').

The legislative history supports this interpretation. In earlier versions of section 401(d), Congress proposed to limit section 401(d) to the enumerated provisions from section 401(a)(1) and either ''any more stringent water quality requirements under State law provided in section 510 of [the Act],'' S. 2770, 92nd Cong. (1972), or ''any regulation under section 316 of this Act.'' H.R. 11896, 92nd Cong. (1972). Ultimately, neither of those formulations was adopted. Instead, consistent with Congress's objective to empower states to protect their waters from pollution, Congress ''expanded'' the scope of section 401(d) ''to also require compliance with any other appropriate requirement of State law which is set forth in the certification.'' S. Rep. No. 92–1236, at 138 (1972) (Conf. Rep.).

EPA recognizes that, as noted by the Court in *PUD No. 1,* the authority granted to certifying authorities in section 401(d) ''is not unbounded.'' 511 U.S. at 712. Rather, the scope is limited to ''ensur[ing] that the project complies with 'any applicable effluent limitations or other limitations under [33 U.S.C. 1311, 1312] or other provisions of the Act,[']' 'and with any other appropriate requirement of State law.'" *Id.* Although the Court declined ''to speculate on what additional state laws, if any, might be incorporated by this language,'' the Court found that ''at a minimum, limitations imposed pursuant to state water quality standards adopted pursuant to [section] 303 are 'appropriate' requirements of state law.'' *Id.* at 713. As discussed earlier in this section, EPA's longstanding position is that the scope of certification decisions and conditions are limited to water quality-related considerations. *See also American Rivers,* 129 F.3d at 107 (''Section 401(d), reasonably read in light of its purpose, restricts conditions that states can impose to those affecting water quality in one manner or another.''). EPA's redefinition of the term ''water quality requirements'' is not intended to alter this interpretation.

The Agency does not, however, view the Act's focus on water quality-related considerations to mean that certifications and conditions may only be based on point source discharge provisions in either Federal or state law. As noted above, the legislative history on section 401 reveals that, although Congress contemplated a narrower interpretation of section 401(d) (*e.g.,* limited to the enumerated provisions and CWA section 316 in the House

version), Congress ultimately codified an ''expanded'' scope of section 401(d).

In addition, EPA does not believe that the scope of a state's or tribe's certification review is limited only to water quality effects in bodies of water meeting the definition of ''navigable waters'' or ''waters of the United States,'' or to water quality effects caused by point sources. There is nothing in the text of section 401 that compels either interpretation. Nor, as we said in the preamble to the 2020 Rule, is EPA aware of any court decisions that have directly addressed the scope of waters covered by section 401. EPA acknowledges it articulated a different position on those issues in the 2020 Rule. 85 FR 42234–35 (July 13, 2020). However, upon reconsideration, EPA believes there are good reasons for changing its position now.

While the text of section 401(a)(1) says that the need for a certification is only triggered by a potential discharge into ''the navigable waters,'' it does not state that, once the need for certification is triggered, a certifying authority must confine its review to potential water quality impacts to such ''navigable waters.'' Indeed, while section 401(a)(1) says that the certifying authority must certify that ''any such discharge'' will comply with various provisions of the CWA, it does not limit the point of compliance for purposes of certifying authority review to the specific outfall point or to the waterbody (''navigable'' or not) into which the triggering discharge occurs. Unlike section 401(a)(1), which uses the term ''discharge'' four times and ''navigable waters'' twice, section 401(d) uses neither term. Instead, the focus of section 401(d) falls on the conduct of, and need to assure compliance by, ''the applicant'' and its licensed or permitted activities, rather than—as with section 401(a)(1)—on the nature and compliance of the ''discharge'' to ''navigable waters.'' Section 401(d) is thus arguably more expansive than section 401(a)(1), providing that the certification authority must assure that ''any applicant'' comply with the same provisions of the CWA, as well as ''any other appropriate requirement of State law,'' and states may, under state law, protect state waters beyond those that are navigable. Again, there is no indication in the text or legislative history that Congress intended the scope of review under sections 401(a)(1) and (d) to assure such compliance be limited to ''navigable waters.'' Had Congress desired to create such a limited scope of review, it could easily have done so. It did not.

This interpretation is reinforced by the fact that Congress intended section 401 to afford states broad power to protect their waters from harm caused by federally licensed or permitted projects. That intent is best realized by interpreting the scope of section 401 review and conditions as applying to impacts to all potentially affected state waters, not just the state's ''navigable waters.'' Such an interpretation is also consistent with *PUD No.1's* affirmance of EPA's determination that the proper scope of review is potential water quality impacts from the ''activity as a whole.'' While the certification triggering discharge must itself be into a ''navigable water,'' water quality impacts from the larger ''project in general'' or the ''activity as a whole'' might well occur in state waters at some distance from the triggering discharge. There is nothing in the phrase ''any other appropriate requirement of State law,'' or the nature of CWA section 303(c) water quality standards, that would compel an interpretation that these water quality requirements could only support certification review or conditions to prevent water quality impacts to the state's ''navigable waters'' or caused by ''point sources.'' Finally, an expansive interpretation of scope of review as applying to all potentially affected state waters is supported by CWA section 510, which—''[e]xcept as expressly provided''—preserves a state's authority and jurisdiction to protect its waters from pollution.

In the preamble to the 2020 Rule, EPA acknowledged that CWA sections 402 and 404 apply only to point source discharges to waters of the United States. 85 FR 42234. EPA does not disagree with that proposition here. However, the Agency no longer believes that the point source focus of sections 402 and 404, or the fact that section 401 is located in the first section of Title IV of the CWA, titled Permits and Licenses, means that—once the need for a certification has been triggered by a point source discharge into a water of the United States—a state may not consider potential water quality effects in non-navigable waters caused by the activity as a whole. EPA disagrees with and finds unpersuasive the 2020 Rule preamble's attempt to conflate section 401 with sections 402 and 404 by saying that ''similar to the section 402 and 404 permit programs, section 401 is a core regulatory provision of the CWA.'' *Id.* While section 401 is certainly a critical element of the Act—indeed, it pre-dated the 1972 CWA amendments and was deemed so important that Congress carried it over—section 401 is a direct congressional grant of authority for states to protect their water resources from impacts caused by federally licensed or permitted projects that is significantly different in character from the Act's other Federal ''regulatory'' provisions. As such, it is more reasonable to interpret section 401's scope broadly to effectuate that grant of authority, consistent with the reservation of state powers in section 510, rather than interpret section 401's scope as limited to consideration of point source discharges to or into waters of the United States like sections 402 and 404.

In the preamble to the 2020 Rule, the Agency said that ''for many of the same reasons why the Agency is not interpreting the use of the word 'applicant' in section 401(d) as broadening the scope of certification beyond the discharge itself, the Agency is also declining to interpret section 401(d) as broadening the scope of waters and the types of discharges to which the CWA federal regulatory programs apply.'' *Id.* at 42235. As an initial matter, the Agency is not espousing in this document an interpretation of the scope of section 401 that in any way broadens the scope of basic Federal regulatory provisions like sections 402 and 404. Instead, the Agency is merely recognizing the fundamental difference between those Federal ''regulatory'' sections, whose scope is textually limited to point source discharges to or into waters of the United States, and the grant of state authority in section 401, which is not so limited. Indeed, to flip the argument EPA made in 2020, the reasons we have articulated above in support of broadening the scope of certification beyond the discharge itself also support expanding its scope beyond a state's navigable waters. The fact that the Agency continues to agree with the Ninth Circuit's analysis and holding in *Dombeck* that section 401 certification is not required for nonpoint source discharges does not compel a different interpretation with respect to these scope issues. *Dombeck,* 172 F.3d at 1098–99. Nor does EPA's interpretation of section 401(d)'s term ''applicant'' as authorizing states to add certification conditions that might protect ''non-federal waters'' in any way broaden the scope of the Federal regulatory programs enacted by the 1972 CWA amendments, *e.g.,* sections 402 and 404, beyond the limits that Congress intended. *See* 85 FR 42234–35. Section 401, although a neighbor to sections 402 and 404 in the CWA's organizational framework, is a fundamentally different provision and

need not be interpreted according to those other provisions' strictures.

EPA is not offering an opinion in this rulemaking about what characteristics such a ''State law'' or ''Tribal law'' must have to qualify as an appropriately ''legal'' basis for certification review or conditions under sections 401(a)(1) or 401(d). In the spirit of cooperative federalism, EPA defers to the relevant state and tribe to define which of their state or tribal provisions qualify as appropriate ''State laws'' or ''Tribal laws'' for purposes of implementing section 401.

EPA requests comment on this proposed definition of ''water quality requirements,'' EPA's basis for proposing it, and any other potential definitions of the term ''water quality requirements'' EPA should consider adopting in the final rule.

F. Certification Decisions

1. Decisions on a Request for Certification

The CWA allows certifying authorities to make one of four decisions on a request for certification pursuant to their section 401 authority. A certifying authority may either grant certification, grant certification with conditions, deny certification, or it may expressly waive certification. A certifying authority may also constructively waive certification by failing or refusing to act in the reasonable period of time. This section briefly discusses each of the four decisions a certifying authority may make, including what each decision means and its impact on the Federal licensing or permitting process. This proposed interpretation of the four decisions a certifying authority may make is consistent with the Agency's interpretation in the 1971 and 2020 Rules.

First, a certifying authority may grant certification. A grant of certification means that the certifying authority has determined that the federally licensed or permitted activity as a whole will comply with water quality requirements. *See* section V.E in this preamble for further discussion of the scope of certification and the term ''water quality requirements.'' Granting certification means that the license or permit may be issued. *See* 33 U.S.C. 1341(a)(1). Section 401(a)(1) provides that in circumstances where there are no applicable water quality requirements for an activity, the certifying authority ''shall so certify.'' *Id.* EPA is proposing minor revisions to the regulatory language currently located at § 121.7(f) that describes this scenario, with minor edits to reflect the proposed scope of certification.

Second, a certifying authority may grant certification with conditions. A grant of certification with conditions means that the certifying authority has determined that the federally licensed or permitted activity as a whole will comply with water quality requirements, but only if certain conditions are met. Section 401(d) provides that any certification condition shall become a condition on the Federal license or permit. *Id.* at 1341(d) (''Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with [sections 301, 302, 306, and 307], and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit . . . .). As discussed later in section V.G in this preamble, circuit courts have routinely held that Federal agencies may not question or criticize a state's water quality conditions. *See, e.g., American Rivers,* 129 F.3d at 107 (''[Section 401(d)] is unequivocal, leaving little room for FERC to argue that it has authority to reject state conditions it finds to be *ultra vires.*''). Granting certification with conditions means the Federal license or permit may be issued, provided the conditions are incorporated into that license or permit. The 2020 Rule includes regulatory text on the incorporation of certification conditions into a license or permit. *See* 40 CFR 121.10. The Agency is not proposing to retain any regulatory text on the incorporation of certification conditions. First, the 2020 Rule limits incorporation of certification conditions to only those that satisfy the content requirements at § 121.7(d). Section 401(d) clearly requires all certification conditions to become conditions on a Federal license or permit and does not limit incorporation to only those conditions that include certain regulatory defined components. As discussed in section V.G in this preamble, EPA does not interpret the statute as allowing a Federal agency to review whether a certifying authority included certain regulatorily defined elements in its certification decisions, nor question certifying authority conditions. Second, while the 2020 Rule requires Federal agencies to clearly identify certification conditions in their Federal license or permit, section 401 does not require Federal agencies to distinguish certification conditions from other condition in their licenses or permits. If the Federal agency finds it useful to distinguish certification conditions for implementation purposes, the Federal agency may structure its license or permit in such a manner, but EPA does not find it necessary for the Agency to require such a distinction.

Third, a certifying authority may deny certification. A denial means that the certifying authority is not able to certify that the activity as a whole will comply with water quality requirements. If a certifying authority denies certification, the license or permit cannot be issued. 33 U.S.C. 1341(a)(1). The 2020 Rule includes regulatory text that discusses the effects of a denial of certification. *See* 40 CFR 121.8. The Agency is not proposing to retain any regulatory text that speaks to the effects of a denial of certification. First, the 2020 Rule provides that a certification denial does not preclude a project proponent from a submitting a new certification request. Section 401(a)(1) provides that a license or permit may not be granted if certification is denied, but it does not speak to new certification submittals following a denial. EPA does not find it necessary to add any additional direction or process for certification denials, beyond defining the contents of a certification denial (as discussed below). If a project proponent disagrees with a certifying authority's denial, the project proponent may challenge the certifying authority's decision in the appropriate court of jurisdiction. *See* S. Rep. 92–414 at 69 (1971) (''Should such an affirmative denial occur no license or permit could be issued by such Federal agencies . . . unless the State action was overturned in the appropriate courts of jurisdiction.''). The 2020 Rule also provides that a Federal license or permit may not be issued if a certifying authority denies certification in the manner prescribed by the 2020 Rule (*i.e.,* contains the contents defined at § 121.7(e)). As discussed in section V.G in this preamble, Federal agency review does not permit a Federal agency to review whether a certifying authority included certain regulatorily defined elements in its certification decisions. Accordingly, it is unnecessary to provide the Federal agency with the role of confirming that a denial is sufficient in the regulatory text.

Fourth, a certifying authority may expressly waive certification. The statute explicitly provides for a constructive waiver if the certifying authority fails or refuses to act on a request for certification within the reasonable period of time. The statute does not expressly state that a certifying

authority may expressly waive certification. However, EPA has determined that providing this opportunity in the proposed rulemaking is consistent with a certifying authority's ability to waive through failure or refusal to act. *See EDF* v. *Alexander,* 501 F. Supp. 742, 771 (N.D. Miss. 1980) (''We do not interpret [the Act] to mean that affirmative waivers are not allowed. Such a construction would be illogical and inconsistent with the purpose of this legislation.''). This interpretation is also consistent with the Agency's longstanding interpretation of the waiver provision. *See* 40 CFR 121.9(a)(1) (allowing a certifying authority to expressly waive certification via written notification); 40 CFR 121.16(a) (2019) (same). Additionally, continuing to allow express waivers may create efficiencies where the certifying authority knows early in the process that it will waive. An express waiver does not mean that the certifying authority has determined that the activity will comply with water quality requirements. Instead, an express waiver indicates only that the certifying authority has chosen not to act on a request for certification. Consistent with the statutory text, an express waiver enables the Federal agency to issue a license or permit.

2. Defining What It Means ''To Act on a Request for Certification''

Once a certifying authority receives a request, the certifying authority must ''act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request.'' 33 U.S.C. 1341(a)(1). The phrase ''to act on a request for certification'' is not defined in the statute; nor did EPA define it in the 1971 or 2020 Rules. To provide greater clarity regarding how a certifying authority ''act[s] on a request for certification'' within the reasonable period of time, EPA is proposing to define the phrase ''to act on a request for certification'' to mean that a certifying authority is making one of the four certification decisions discussed above: granting certification, granting certification with conditions, denying certification, or expressly waiving certification.

In pre-proposal feedback, a few stakeholders asked the Agency to provide additional clarification regarding what it means to ''act on a request for certification.'' For example, would decisions beyond the four just discussed qualify as acting (*e.g.,* would a certifying authority ''act on a request for certification'' if it requested that the project proponent withdraw and resubmit its certification request)? Specifically, states and tribes expressed concern about their ability to make one of the four above-described decisions on a request for certification within the reasonable period of time, especially for larger, more complex projects. Recent case law has also highlighted the need to clarify this issue, particularly in instances where a certifying authority does not wish to waive certification. The D.C. Circuit has further suggested that acting on a request for certification does not include participating in a coordinated withdrawal and resubmission ''scheme.'' *See Hoopa Valley Tribe,* 913 F.3d at 1101–02.[46] The Fourth Circuit recently held that it was permissible for the project proponent to withdraw its application in order to avoid a certification denial as long as the certifying authority and project proponent were not in a ''coordinated withdrawal and resubmission scheme.'' *NCDEQ,* 3 F.4th at 672, 676. However, the court also suggested that the section 401 phrase ''to act'' could be interpreted to mean something different than a final agency action on a request for certification. According to the court, a certifying authority that ''takes significant and meaningful action'' and ''in good faith takes timely action to review and process a certification request likely would not lose its authority to ensure that federally licensed projects comply with the State's water-quality standards, even if it takes the State longer than a year to make its final certification decision'' *Id.* at 670.

Some stakeholders have expressed concern with the *NCDEQ* approach, noting that it may make the section 401 certification process less predictable and transparent. EPA shares those concerns. The Agency is concerned that interpreting ''to act on a request for certification'' as any ''significant and meaningful action'' might inject significant uncertainty and subjectivity into the certification process (*e.g.,* what is a ''significant and meaningful action?'') causing significant confusion for stakeholders.

Although the Agency has never explicitly defined ''to act on a request for certification,'' prior Agency guidance and the 2020 Rule preamble took the position that certifying authorities must make a decision on a request for certification within the reasonable period of time. For instance, in the 2010 Handbook, EPA stated that to avoid constructively waiving certification, the certifying authority should ''verify the time available for [its] certification decision.''[47] One implication of this language is that the Agency thought that ''to act on a request for certification'' means to make a final decision on the request (*i.e.,* grant, grant with conditions, deny, or expressly waive certification). Courts appear to agree. *See, e.g., Alcoa Power Generating, Inc.* v. *FERC,* 643 F.3d 963, 972 (D.C. Cir. 2011) (noting that ''[i]n imposing a one-year time limit on States to 'act,' Congress plainly intended to limit the amount of time that a State could delay a federal licensing proceeding without making a decision on the certification request''); *NYDEC,* 884 F.3d at 455–56 (noting that a state must act after receiving a certification request and that denial ''would constitute 'acting' on the request under the language of Section 401'').

Based on stakeholder feedback and recent court cases suggesting ambiguity with respect to what it means for a certifying authority to act, EPA is proposing to clarify that the phrase ''to act on a request for certification'' means that a certifying authority makes one of the four above-described certification decisions: grant, grant with conditions, deny, or expressly waive. In light of the case law and EPA's prior statements and practice, EPA thinks this is the most reasonable interpretation of what it means for a certifying authority ''to act on a request for certification.'' It also provides stakeholders with a clear and predictable endpoint for knowing when the certifying authority has failed or refused to act, resulting in a waiver. *See* 33 U.S.C. 1341(a)(1) (''If the State . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.''). The Agency is requesting comment on the proposed interpretation of what it means to act on a request for certification, as well as any alternative interpretations (*e.g., NCDEQ* approach).

3. Failing or Refusing To Act on a Request for Certification

The Agency is also proposing to clarify what it means for a certifying authority to fail or refuse to act on a

[46] The D.C. Circuit held that California and Oregon had waived their section 401 authority by allowing the project applicant to repeatedly withdraw and resubmit the same certification request to avoid exceeding the reasonable period of time deadline. 913 F.3d at 1101. The D.C. Circuit also found that FERC's interpretation of ''act on a request'' as allowing the states to ''indefinitely delay'' its review was arbitrary and capricious and not within the bounds of its authority under section 401. *Id.* at 1102.

[47] *See* 2010 Handbook, at 11 (rescinded).

request for certification. As discussed above, the Agency is proposing to define ''act on a request for certification'' as the certifying authority making one of four certification decisions: grant, grant with conditions, deny, or expressly waive. If the certifying authority fails to take one of these actions, the certification may be treated as a constructive waiver. Consistent with the statutory text, when a certifying authority waives the requirement for a certification, the Federal agency may proceed to issue the license or permit. 33 U.S.C. 1341(a)(1).

The plain language of section 401(a)(1) provides that the certification requirement is waived if a certifying authority ''fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year).'' *Id.* Section 401(a)(1) clearly indicates Congress's intent to limit constructive waivers to situations where a certifying authority did not act. *See id.* (''No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence.''). The legislative history of this provision suggests that constructive waivers were intended to prevent delays in the Federal licensing or permitting process due to the certifying authority's inactivity. *See* H. Rep. No 92–911, at 122 (1972) (''In order to insure that sheer inactivity by the State, interstate agency or Administrator as the case may be, will not frustrate the Federal application, a requirement, that if within a reasonable period, which cannot exceed 1 year, after it has received a request to certify the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on the request for certification, then the certification requirement is waived.''). Similarly, the 1971 Rule and subsequent Agency guidance recognized that constructive waivers could occur due to certifying authority inaction. *See* 40 CFR 121.16(b) (2019) (noting that constructive waivers occurred upon the ''failure of the State . . . concerned to act on such a request for certification within a reasonable period of time after receipt of such request''); 2010 Handbook, at 11 (rescinded) (''State and tribes are authorized to waive [section] 401 certification . . . by the certification agency not taking action.'').

The 2020 Rule's interpretation of what it means for a certifying authority to fail or refuse to act departs from the longstanding Agency position on constructive waivers. The 2020 Rule allows a Federal agency to determine that a certifying authority had failed or refused to act, and thereby waived certification, where the certifying authority's action on a request for certification was procedurally deficient (*e.g.,* did not follow the 2020 Rule's procedural requirements for a denial of certification). 40 CFR 121.9(a)(2); 85 FR 42266. Similarly, a Federal agency can determine that a certification condition is waived if the condition does not comply with procedural requirements of the 2020 Rule. *Id.* at 42250. This aspect of the 2020 Rule drew considerable pre-proposal input from certifying authorities who argued that this interpretation could result in a Federal agency ''veto'' of a section 401 certification, and was contrary to the statute and the legislative history. EPA similarly expressed concern in its **Federal Register** notice announcing its intent to revise the 2020 Rule, noting that ''a federal agency's review may result in a state or tribe's certification or conditions being permanently waived as a result of non-substantive and easily fixed procedural concerns identified by the federal agency.'' 86 FR 29543 (June 2, 2021).

The 2020 Rule's interpretation of waiver is not consistent with the plain language of the statute and its legislative history. The mere failure of a certifying authority to include certain regulatorily defined elements in its certification decisions or comply with other procedural requirements of section 401, such as providing public notice on a request for certification, do not qualify as the kind of ''sheer inactivity'' that Congress contemplated would result in a constructive waiver. Consistent with the statutory language, legislative history, and prior Agency interpretation, EPA is proposing to revise the regulatory text to clarify that constructive waivers may only occur if a certifying authority fails or refuses to take one of the four actions described in this section within the reasonable period of time.

4. Contents of a Certification Decision

To provide further clarity on how a certifying authority may ''act on a request for certification,'' EPA is also proposing to define the contents of a certification decision. Accordingly, EPA is proposing to remove the regulatory text currently located at § 121.7(b), which characterizes what actions a certifying authority may take based on its evaluation of the request for certification. The regulatory text proposed at § 121.7(c)–(f) sufficiently defines the contents of each certification decision and identifies the actions a certifying authority may take based on its evaluation of the request for certification such that EPA believes it would be redundant to retain separate regulatory text restating the same ideas.

While the statute provides that certifying authorities may make one of four decisions when processing a certification request, the CWA does not explicitly describe the contents or elements of a certification decision. EPA's 1971 Rule defined the contents of a certification and express waiver decision for all certifying authorities. The 1971 Rule's enumeration of the contents of a certification decision were simple but effective and included the name and address of the applicant, a statement that the certifying authority examined the application, a statement that ''there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards,'' and other information deemed appropriate by the certifying authority. 40 CFR 121.2(a) (2019). In addition, the 1971 Rule provided that a certification could be waived upon either (1) written notification from the certifying authority that it expressly waived its authority to act on a request, or (2) written notification from the licensing or permitting agency regarding the failure of the certifying authority to act on a request for certification within the reasonable period of time. 40 CFR 121.16 (2019). The 1971 Rule did not define the contents of a certification denial or provide specific requirements for how to articulate and incorporate a certification condition.

In the 2020 Rule, EPA updated those requirements for each type of certification decision and more fully addressed the effects of those decisions. First, it provides that, when a certifying authority granted certification under the 2020 Rule, the certification must be in writing and include a written statement that the discharge from the proposed federally licensed or permitted project would comply with water quality requirements. 40 CFR 121.7(c); 85 FR 42286.

Second, when a certifying authority grants certification with conditions, the 2020 Rule requires that the certifying authority explain the necessity of each condition and provide a citation to an applicable Federal, state, or tribal law. 40 CFR 121.7(d); 85 FR 42286. This was a change from the 1971 Rule, which broadly provided for certifying authorities to include conditions as they ''deem[ed] necessary or desirable.'' 40 CFR 121.2(a)(4) (2019). The 2020 Rule preamble stated that the new requirements were ''intended to increase transparency and ensure that any limitation or requirement added to a certification . . . is within the scope

of certification.'' 85 FR 42256. Additionally, EPA observes that this provision is similar to EPA's NPDES program-specific section 401 regulations. *See* 40 CFR 124.53(e)(2) (requiring a citation for any conditions more stringent than those in the draft permit).

Third, unlike the 1971 Rule, under which certification denials were undefined, the 2020 Rule defines the contents of a denial. Specifically, the 2020 Rule requires certification denials to be made in writing and to identify any water quality requirements with which the discharge will not comply, include a statement explaining why the discharge would not comply with those requirements, and provide any specific water quality data or information that would help explain a denial based on insufficient information. 40 CFR 121.7(e); 85 FR 42286.

Fourth, the 2020 Rule includes similar language to the 1971 Rule for express waivers and required written notification from the certifying authority indicating an express waiver of its authority to act on a request for certification. 40 CFR 121.9(a)(1); 85 FR 42286 (July 13, 2020). Lastly, under the 2020 Rule, EPA defined constructive waiver as a certifying authority's ''failure or refusal to act on a certification request'' which included failing or refusing to (1) act within the reasonable period of time, (2) satisfy the requirements for a grant or denial of certification, or (3) comply with other procedural requirements of section 401 (*e.g.,* provide public notice on a certification request). 40 CFR 121.9(a)(2); 85 FR 42286. The 2020 Rule also provided that waivers could occur if the certifying authority failed or refused to satisfy the requirements of any certification conditions. 40 CFR 121.9(b); 85 FR 42286. *See* section V.G in this preamble for further discussion on constructive waivers and the role of Federal agencies.

The stated purpose of the 2020 Rule requirements was to promote transparency and consistency in certification decisions and to help streamline the Federal licensing and permitting processes. 85 FR 42220 (July 13, 2020). However, in pre-proposal input, several certifying authorities said that the 2020 Rule's requirements for the contents of certification decisions delayed rather than streamlined the certification process. Conversely, in pre-proposal outreach, project proponents expressed interest in keeping the 2020 Rule requirements for the added transparency and argued that it is helpful when certifying authorities explain their final certification decisions (especially denials). Project proponents have also argued that certifying authorities benefit from including this additional information in their certification decisions because it helps build complete and legally defensible administrative records to support their certification actions.

Under this proposed approach, similar to the approach taken in the 2020 Rule, EPA is proposing revisions to the regulatory text currently located at § 121.7(a) to clarify that all certification decisions should: be in writing; clearly state whether the certifying authority has chosen to grant, grant with conditions, deny, or expressly waive certification; be within the scope of certification, as defined at proposed § 121.3; and be taken within the reasonable period of time, as determined pursuant to proposed § 121.6.

Like the approach taken in the 1971 and 2020 Rules, EPA is proposing to include some requirements for each of the four types of certification decisions. This approach addresses both the workload concerns expressed by certifying authorities, and the desire of project proponents for increased transparency and consistency in the certification process. The list of elements required for each certification decision will provide predictability and still allow certifying authorities the flexibility to add additional elements of their own under state or tribal law. EPA does not anticipate that this proposed approach will be controversial because it is generally consistent with the approach taken in the 1971 Rule and 2020 Rule.

Consistent with the position taken in the 2020 Rule, the Agency has opted to retain contents of a certification decision consistent with the 1972 statutory language. Unlike the 2020 Rule, the 1971 Rule included language that reflected the predecessor statute. For example, the 1971 Rule required certifications to include a ''statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards.'' 40 CFR 121.2(3) (2019). As discussed in section IV.A in this preamble, the 1972 CWA revised the predecessor version of section 401 to reflect the changed emphasis from complying with ''water quality standards'' to complying with ''the applicable provisions of sections 301, 302, 303, 306, and 307'' of the CWA. 33 U.S.C. 1341(a)(1). Additionally, Congress added section 401(d) that requires a certifying authority to include ''any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply'' with the enumerated provisions of the CWA and any other appropriate requirement of state law. *Id.* at 1341(d). Consistent with this change, the Agency is proposing to retain a similar provision as the 2020 Rule that certification decisions to grant, grant with conditions, or deny certification must indicate whether the certifying authority has determined that an activity will comply with the water quality requirements identified in the 1972 CWA, not just water quality standards. Additionally, consistent with the proposal's scope of certification, EPA is proposing that certification decisions must indicate whether the activity as a whole, as opposed to the discharge, will comply with water quality requirements. *See* section E of this proposal for further discussion on the scope of certification.

Similar to the Agency's position in the 2020 Rule, the Agency does not think that retaining the 1972 statutory language ''will comply'' in the proposed regulations requires certifying authorities to provide absolute certainty that applicants for a Federal license or permit will never violate water quality requirements. *See* 85 FR 42278 (July 13, 2020). This is not EPA's intention, and EPA does not think such a stringent interpretation is required by the statutory or proposed regulatory language. The use of language comparable to ''will comply'' is not uncommon in CWA regulatory programs. For example, CWA section 402 contemplates that NPDES permits will only be issued upon a showing that discharge ''will meet'' various enumerated provisions of the CWA. 33 U.S.C. 1342(a). This standard has not precluded states, tribes, or EPA from routinely issuing NPDES permits to allow pollutant discharges.

Nor does EPA expect that the use of ''will comply'' will impede or limit a certifying authority's ability to act on a request for certification. Additionally, the Agency does not think that this proposed language prevents certifying authorities from relying on modeling information, which provides an informed projection of potential impacts, to make a certification decision. When a certifying authority makes a certification decision, EPA believes that the certifying authority would be certifying that the ''activity as a whole'' will comply with water quality requirements for the life of the license or permit and not just at the moment the license or permit is issued. The lifespan of FERC licenses can be decades, whereas section 402 or 404

permits last five years. Given the possible lifespan of a license or permit, and the possibility that water quality-related changes or impacts may occur due to climate change or other factors during that time, it is reasonable (and perhaps essential in some cases) for certifying authorities to rely on modeling to inform certification decisions. EPA does not intend or expect the use of the term ''will comply'' to limit or impact a certifying authority's ability to rely on such modeling to support its certification decisions.

Since EPA is defining ''to act on a request for certification'' as making one of four certification decisions, it is reasonable for EPA to identify a non-exhaustive list of contents for each of those certification decisions. Under EPA's proposal, certifying authorities would be free to add additional elements or information requirements to any of these four certification decisions to provide stakeholders with clarity and transparency. For example, a certifying authority may choose to require a citation to applicable Federal or state water quality requirements to support a certification condition. For its part, EPA is not proposing to include this additional requirement as a Federal regulatory element as it did in the 2020 Rule.

The following paragraphs describe the Federal requirements EPA is proposing to adopt for each of the four kinds of certification decisions. Under this proposal, each of the four kinds of certification decisions must be in writing and include the name and address of the project proponent and identification of the applicable Federal license or permit. Additionally, each of the four kinds of certification decisions includes other requirements.

First, any grant of certification shall include a written statement that the federally licensed or permitted activity as a whole ''will comply'' with water quality requirements. While the 1971 Rule required a statement that there was ''reasonable assurance,'' 40 CFR 121.2(a) (2019), as explained above, the 2020 Rule uses the term ''will comply'' which is more consistent with the 1972 statutory language used in sections 401(a)(1) and 401(d).

Second, EPA is proposing that any grant of certification with conditions shall (1) identify any conditions necessary to assure that the activity as a whole will comply with water quality requirements and (2) include a statement explaining why each condition is necessary to assure that the activity as a whole will comply with water quality requirements. This proposal reflects the language used in section 401(d) and is similar to the approach taken under the 1971 and 2020 Rules. A statement explaining why a condition is necessary will help project proponents and Federal agencies understand the reason for the condition and assist in its implementation. EPA anticipates that such information is readily available to the certifying authority as part of its decision-making process. However, unlike the 2020 Rule, the Agency is not proposing to require certifying authorities to include a specific statutory or regulatory citation in support of a certification condition. Rather, the Agency will let certifying authorities decide what relevant information to provide in support of any conditions. Additionally, EPA is not proposing to distinguish between certification decisions based on an individual or a general license or permit. Although EPA made such a distinction in the 2020 Rule, EPA finds it unnecessary here because the few relevant proposed regulatory requirements apply to a certification with conditions regardless of the nature of the license or permit. EPA is proposing limited regulatory requirements in this area, anticipating that certifying authorities will work with project proponents and Federal agencies to determine what information would be most useful (*e.g.,* statutory or regulatory citations).

Consistent with this approach, EPA recognizes that certification conditions are an important tool that enable certifying authorities to ensure that projects needing Federal licenses or permits will be able to move forward without adverse impacts to water quality. EPA encourages certifying authorities to develop certification conditions in a way that enables projects to adapt to future water quality-related changes, *i.e.,* so-called ''adaptive management conditions.'' For example, if a certifying authority is concerned about future downstream, climate change-related impacts on aquatic species due to increased reservoir temperatures during the lifespan of a hydropower dam license, the certifying authority might develop a condition that would allow a project proponent to take subsequent, remedial action in response to reservoir temperature increases (*e.g.,* conditions that might require, as necessary, a change in reservoir withdrawal location in the water column, a change in the timing of releases, etc.). To ensure project proponents and Federal agencies understand and are able to implement any such adaptive management conditions, EPA recommends that certifying authorities clearly define and explain the basis for these conditions and the circumstances in which adaptive management conditions may spring into effect (*e.g.,* expectations for undertaking additional planning and monitoring; thresholds triggering adaptive responses; requirements for ongoing compliance). EPA has previously acknowledged the use of ''adaptive management'' conditions in prior guidance, *see, e.g.,* 2010 Handbook, at 32, and will explore the development of other guidance on this topic in the future. EPA requests comment on whether it should define in more detail—as it did in the 2020 Rule—what information should be included in support of a certification condition and examples of such information (*e.g.,* statutory and regulatory citations).

Third, EPA is proposing that any denial of certification shall include a statement explaining why the certifying authority cannot certify that the proposed activity as a whole will comply with water quality requirements. Although the 1971 Rule did not define the elements of a decision to deny certification, this concept was introduced in the 2020 Rule. The proposed requirements for a denial of certification are similar to the requirements in the 2020 Rule. However, the Agency is not proposing to retain the 2020 Rule requirements to identify the specific water quality requirements with which the project will not comply nor require the certifying authority to describe the missing data or information that would be necessary in instances where the denial is due to insufficient information. *See* 40 CFR 121.7(e). Rather, EPA's few relevant regulatory requirements anticipate that certifying authorities will work with project proponents and Federal agencies to determine what information would be most useful. Additionally, EPA is not proposing to distinguish between certification decisions based on an individual or a general license or permit. Although EPA took this approach in the 2020 Rule, EPA finds that the few relevant proposed regulatory requirements apply to a denial of certification regardless of the nature of the license or permit. EPA does not expect this to be a burdensome requirement for certifying authorities. As a practical matter, certifying authorities will likely already have developed and considered such information as part of their decision-making process and included it in the record to substantiate their decision.

Aside from borrowing from their decision-making record, EPA expects that certifying authorities may be able to satisfy this requirement in a number of ways. For example, certifying authorities could identify specific water quality requirements with which the activity as a whole will not comply, or identify what information about the project or potential water quality effects is missing or incomplete that led the certifying authority to not be able to determine whether the activity as a whole will comply with water quality requirements. This proposal to provide at least a succinct explanation for the certification denial will provide necessary transparency and clarity for project proponents and Federal agencies.

Lastly, consistent with the 1971 Rule and 2020 Rule, EPA is proposing that any express waiver made by a certifying authority shall include a statement from the certifying authority stating that it expressly waives its authority to act on a request for certification. As noted above, an express waiver indicates only that the certifying authority has chosen not to act on a request for section 401 certification. Accordingly, the certifying authority only needs to state that it is waiving certification and does not need to make any statement about why it has decided to waive or its assessment of the project's impact on its water quality.

EPA is also proposing to delete 40 CFR 124.53(e), which addresses the contents of a certification for an EPA-issued NPDES permit. The contents identified at § 124.53(e) are not consistent with the contents identified at proposed § 121.7(c) and (d). For example, § 124.53(e) requires a citation (but not an explanation) for each condition of certification, whereas proposed § 121.7(d) requires an explanation (but not a citation) for each condition. Further, § 124.53(e)(1) and proposed § 121.7(d)(2)—both of which identify what conditions must be included in a certification—are distinct. Proposed § 121.7(d)(2) incorporates the proposal's concepts of ''the activity as a whole'' and ''water quality requirements'' while § 124.53(e)(1) does not. EPA intends for all certification decisions, including those on EPA-issued NPDES permits, to comply with the requirements discussed above and proposed at § 121.7.

EPA is requesting comment on the proposed approach described above, including whether the Agency should include additional or alternative requirements for certification actions. The Agency is also requesting comment on an alternative approach that would only require a limited list of contents for certification decisions when EPA acts as a certifying authority. This alternative approach would not delineate any specific requirements for certification decisions made by any other certifying authority.

G. Federal Agency Review

The proposed rule confirms the Agency's longstanding position prior to the 2020 Rule that Federal agencies may review a certification decision only for the limited purpose of ensuring that the decision meets a handful of facial statutory requirements. Specifically, EPA is proposing that Federal agencies may review a certifying authority's certification decision to determine (1) whether the decision clearly indicates the nature of the decision (*i.e.,* is it a grant, grant with conditions, denial, or express waiver), (2) whether the proper certifying authority issued the decision, (3) whether public notice was provided, and (4) whether the decision was issued within the reasonable period of time. As discussed below, the Agency views this Federal agency review role as consistent with Agency practice prior to the 2020 Rule and case law.

Section 401 does not expressly provide a defined role for Federal licensing or permitting agencies to review certifications or change certification conditions. However, the Agency has long recognized, both in regulation and guidance, some degree of appropriate Federal agency review of certification decisions. The 1971 Rule provides Federal agencies with the ability to determine whether a certifying authority acted within the reasonable period of time. *See* 40 CFR 121.16(b) (2019) (''The certification requirement with respect to an application for a license or permit shall be waived upon . . . Written notification from the licensing or permitting agency to the Regional Administrator of the failure of the State or interstate agency concerned to act on such request for certification within a reasonable period of time after receipt of such request . . . .''). Prior EPA guidance acknowledged that the Federal licensing or permitting agency may review the procedural requirements of a certification decision. 2010 Handbook, at 32 (rescinded) (citing *American Rivers,* 129 F.3d at 110–111; *City of Tacoma* v. *FERC,* 460 F.3d 53, 68 (D.C. Cir. 2006)) (''For example, the federal permitting or licensing authority may review the procedural requirements of [section] 401 certification, including whether the proper state or tribe has certified, whether the state or tribe complied with applicable public notice requirements, and whether the certification decision was timely.''). However, this guidance also acknowledged the limitations of Federal agency review and stated that Federal agencies cannot pick and choose among a certifying authority's certification conditions. *Id.* at 10 (citing *American Rivers,* 129 F.3d at 110–111).

Prior Agency guidance relied heavily on case law addressing the question of Federal agency review. A few courts have acknowledged a limited role for Federal agencies to ensure that a certifying authority meets certain facial requirements of section 401. The D.C. Circuit has held that section 401(a)(1) authorized FERC, as the relevant Federal licensing agency, ''to determine that the specific certification 'required by [section 401 has] been obtained,''' because otherwise, ''without that certification, FERC lack[ed] authority to issue a license.'' *City of Tacoma,* 460 F.3d at 67–68 (''If the question [raised to FERC] regarding the state's section 401 certification is not the application of state water quality standards but compliance with the terms of section 401, then FERC must address it.''). The court did not define what a ''certification required by this section'' included, but suggested it included at a minimum, ''explicit requirement[s] of section 401,'' including that the certifying authority provide public notice, which was the section 401 requirement at issue in the case before the court. *Id.* at 68. It is important to note that, while the court found that FERC had an obligation under the facts of that case to confirm the public notice requirement was satisfied, the court did not frame this requirement as a prerequisite in every instance where the agency is presented with a certification decision. Rather, the court found that FERC had to confirm compliance in the case before it because public notice had been ''called into question.'' *See id.*

In an earlier case, the Second Circuit ruled that FERC did not have authority to substantively review certification conditions to ''decide which conditions are within the confines of [section] 401(d) and which are not.'' *American Rivers,* 129 F.3d at 107. In reaching this conclusion, the court noted that FERC nonetheless did have authority to determine whether the appropriate certifying authority issued the certification decision and whether the certification decision was issued within the reasonable period of time. The court explained that, ''[w]hile [FERC] may determine whether the proper state has issued the certification or whether a state has issued a certification within the prescribed period, [FERC] does not possess a roving mandate to decide that substantive aspects of state-imposed

conditions are inconsistent with the terms of [section] 401.'' *Id.* at 110–11.

Under the 2020 Rule, the Federal agency may review a certification to confirm that a number of certification requirements are met as a prerequisite to accepting the certification decision. 85 FR 42267. Specifically, the 2020 Rule relies on *City of Tacoma* to assert that the plain language of section 401 requires Federal licensing or permitting agencies ''to confirm that the state has facially satisfied the express requirements of section 401.'' 85 FR 42267–68 (quoting *City of Tacoma,* 460 F.3d at 68). The 2020 Rule requires the Federal licensing agency to ensure (1) compliance with ''other procedural requirements of section 401'' (which included public notice requirements), (2) compliance with the reasonable period of time, and (3) compliance with the rule's requirements related to providing a legal and technical basis within the certification document for the action taken. The 2020 Rule contains little direction to Federal agencies about how to ensure that those components are met (*e.g.,* how to confirm public notice took place), other than noting in the preamble that the Federal agency's review role does not require the agency to ''make a substantive inquiry into the sufficiency of the information provided in support of a certification, condition, or a denial.'' *Id.* at 42268.

This lack of clarity in the 2020 Rule has led to stakeholder confusion and misunderstanding about the nature of the Federal agency's review (*e.g.,* assertions from both Federal agencies and states and tribes that the review is to be ''substantive'' in nature). Additionally, although the 2020 Rule limits Federal agency review to certain procedural components, Federal agency stakeholders expressed concerns about even this responsibility. In this vein, the 2020 Rule preamble says that ''[i]f a federal agency, in its review, determines that a certifying authority failed or refused to comply with the procedural requirements of the Act, including the procedural requirements of this final rule, the certification action, whether it is a grant, grant with conditions, or denial, will be waived.'' *Id.* at 42266. The 2020 Rule takes the same approach with review of individual conditions, *i.e.,* if a condition does not meet procedural requirements, it is waived (even though the certification itself stands). *Id.* at 42263. The 2020 Rule does not extend Federal agency review to more substantive requirements of the Act (*e.g.,* whether a certification decision was within the scope of certification). *Id.* at 42267.

In pre-proposal feedback for this rule, certifying authorities expressed concern over the potential consequences of Federal agency review required by the 2020 Rule. These stakeholders said that, contrary to the plain language of the statute and legislative history, the 2020 Rule gives Federal agencies the ability to effectively ''veto'' a state or tribal water quality certification, with no ability for the certifying authority to fix errors or submit additional explanatory information. EPA reflected this concern in its recent **Federal Register** document, stating that ''EPA is concerned that a federal agency's review may result in a state or tribe's certification or conditions being permanently waived as a result of nonsubstantive and easily fixed procedural concerns identified by the federal agency.'' 86 FR 29543 (June 2, 2021).

The following subsections discuss the extent of Federal agency review, the Federal agency review process, and consequences of such review under this proposal.

1. Extent of Federal Agency Review

The Agency is proposing to reaffirm its longstanding interpretation prior to the 2020 Rule that Federal agencies may review certification decisions only for the limited purpose of ensuring decisions will meet certain facial statutory requirements. Federal agency review of such requirements does not require a Federal agency to inquire into whether the certification is consistent with the substantive elements of Federal, state, or tribal law. In fact, consistent with prior Agency guidance and the 2020 Rule, section 401 does not authorize Federal agencies to review or change the substance of a certification (*e.g.,* determine whether the certification or its conditions is within section 401's scope of review). *See* 86 FR 42268; 2010 Handbook, at 10 (rescinded).

Circuit courts have routinely held that Federal agencies may not question or criticize the substance of a state's water quality certification or conditions, *sees, e.g., City of Tacoma,* 460 F.3d at 67 (''[The Federal agency's] role is limited to awaiting, and then deferring to, the initial decision of the state.''); *American Rivers,* 129 F.3d at 111 (''[The Federal agency] does not possess a roving mandate to decide that substantive aspects of state-imposed conditions are inconsistent with the terms of [section] 401.''); *U.S. Dept. of Interior* v. *FERC,* 952 F.2d 538, 548 (D.C. Cir. 1992) (''FERC may not alter or reject conditions imposed by the states through section 401 certificates.''). Courts have also cautioned Federal agencies against imposing conditions they believe are more stringent than the certifying authority's conditions. *See Sierra Club* v. *U.S. Army Corps of Eng'rs,* 909 F.3d 635, 648 (4th Cir. 2018) (''the plain language of the Clean Water Act does not authorize the Corps to replace a state condition with a meaningfully different alternative condition, even if the Corps reasonably determines that the alternative condition is more protective of water quality''); *see also Lake Carriers' Ass'n.* v. *EPA,* 652 F.3d 1, 6, 12 (D.C. Cir. 2011) (concluding that additional notice and comment on state certification conditions would have been futile because ''the petitioners have failed to establish that EPA can alter or reject state certification conditions. . . .'').

Rather, courts have generally found that Federal agencies may review certification decisions only to see whether the water quality certifications satisfy the minimum facial requirements of section 401, including whether the decision was issued within the reasonable period of time, whether public notice was provided, and whether the proper certifying authority issued the decision. The court in *City of Tacoma* found that if the facial public notice requirement of section 401 is ''called into question'' before the Federal agency, the Federal agency must determine if it was met. 460 F.3d at 68 (requiring the Federal agency ''to obtain some minimal confirmation of such compliance, at least in a case where compliance has been called into question.'').

Therefore, and consistent with the case law, EPA is proposing that Federal agency review of a certification decision is limited to four factors. First, a Federal agency may review a certification decision to confirm the nature of the decision (*i.e.,* whether the certification decision is a grant, grant with conditions, denial, or express waiver). Section 401 requires a project proponent to obtain either a certification or waiver before the Federal agency may issue the license or permit. If a certifying authority denies certification, then the license or permit may not be issued. The Federal agency must determine whether ''the specific certification 'required by [section 401 has] been obtained,' '' because otherwise, ''without that certification, [the Federal agency] lacks authority to issue a license.'' *Id.* at 67–68. It is thus reasonable for a Federal agency to review a certification decision to ensure it understands which action the certifying authority took (*i.e.,* grant, grant with conditions, deny, or expressly waive).

Second, a Federal agency may confirm that the proper certifying authority issued the certification decision. Section 401 requires a project proponent to seek certification from the jurisdiction in which the discharge originates or will originate. 33 U.S.C. 1341(a)(1). Allowing a Federal agency to confirm that the proper certifying authority—meaning the certifying authority for the jurisdiction where the discharge originates or will originate—has issued certification is consistent with case law, *American Rivers,* 129 F.3d at 110–11, and prior Agency regulations and guidance, 85 FR 42267; 2010 Handbook, at 10 (rescinded).

Third, a Federal agency may review a certification decision to determine whether the certifying authority complied with its own established procedures for public notice on requests for water quality certification. Section 401 requires a certifying authority to provide procedures for public notice, and a public hearing where necessary, on a certification request. 33 U.S.C. 1341(a)(1). In *City of Tacoma,* the court held that the Federal agency had a statutory obligation to confirm whether the certifying authority complied with its public notice procedures in issuing the certification because compliance had been called into question. 460 F.3d at 68. ''Otherwise, [the Federal agency] has no assurance that the certification the state has issued satisfies section 401.'' *Id.* As discussed above, prior Agency guidance and regulations have recognized this form of Federal agency review. *See* 85 FR 42267; 2010 Handbook, at 10 (rescinded).

Lastly, a Federal agency may review a certification decision to confirm whether it was issued within the reasonable period of time. Section 401 establishes one year as the outer bound of the reasonable period of time. 33 U.S.C. 1341(a)(1); H.R. Rep. No. 91–940, at 54–55 (March 24, 1970) (Conf. Rep) (adding a timeline for state certification ''[i]n order to insure that sheer inactivity by the State . . . will not frustrate the Federal application''). It is thus reasonable for the Federal agency to determine whether a certifying authority failed to act within the reasonable period of time, and this has been the Agency's longstanding position in regulation and guidance. *See* 40 CFR 121.16(b) (2019); 85 FR 42267; 2010 Handbook, at 10 (rescinded). Additionally, as discussed above, this is also consistent with case law on Federal agency review. *See American Rivers,* 129 F.3d at 110–11 (explaining that FERC ''may determine . . . whether a state has issued a certification within the prescribed period''); *see also Alcoa Power Generating,* 643 F.3d at 972–73 (holding that, like the public notice requirements at issue in *City of Tacoma,* the issue of whether a certifying authority acted upon a certification request within the statutory one-year period was an issue properly before FERC).

EPA does not find that Federal agencies have the authority to review other aspects of a certification decision for purposes of determining whether a ''certification required by [section 401] has been obtained or has been waived.'' 33 U.S.C. 1341(a)(1). EPA's proposal to clearly define the extent of Federal agency review in regulatory text is found in proposed § 121.9. EPA requests comment on its proposed approach, including whether section 401 authorizes other aspects of a certification decision to be subject to Federal agency review.

2. Federal Agency Review Process

This proposed rule also attempts to clarify the manner in which Federal agency review would occur. Section 401 does not expressly address what specific information certifying authorities must include in a certification decision, nor does it address the process of Federal agency review. While the statute does contain important information about the identity of the appropriate certifying authority, the length of the reasonable period of time, and a requirement for public notice, it does not prescribe how a certifying authority must demonstrate compliance with those requirements or describe the extent to which they are subject to Federal agency review.

EPA is not proposing to define what specific information a certifying authority must include in its certification decision to demonstrate that it has met these four facial elements of section 401. Instead, certifying authorities may determine how to demonstrate compliance in response to a Federal agency inquiry about one of these aspects of its certification decision. Because certifying authorities are the entities most familiar with their certification process, certifying authorities, and not EPA or other Federal agencies, are in the best position to determine how to demonstrate compliance with these four section 401 facial elements.

EPA does not anticipate that such demonstrations will be burdensome. As the court noted in *City of Tacoma,* Federal agencies only need ''to obtain some minimal confirmation of such compliance.'' 460 F.3d at 68. For example, the certifying authority may choose to demonstrate that it provided public notice either by including a copy of the public notice with the certification or by including an attestation statement that public notice occurred. Similarly, a certifying authority may choose to demonstrate that it acted within the reasonable period of time by providing documentation of the date the certifying authority received the request for certification and documentation of the date it furnished the project proponent with a decision. A certifying authority may also choose to demonstrate that it is the proper certifying authority by providing location information, such as a map, demonstrating the discharge will originate in its jurisdiction. This sort of documentation should satisfy Federal agency review in most instances.

EPA is requesting comment on its proposed approach, including examples of how a certifying authority could demonstrate that it met the section 401 facial requirements. In addition, EPA requests comment on alternative approaches whereby the Agency might identify in regulation different elements of a certification decision that might be appropriate for Federal agency review, or whether EPA should defer to Federal agencies to define those elements appropriate for them to review.

3. Consequences of Federal Agency Review

The Agency is proposing to clarify the consequences of Federal agency review. If a Federal agency reviews a section 401 certification decision and determines it was not issued within the reasonable period of time, the Federal agency may determine that a waiver has occurred (or alternatively, may extend the reasonable period of time up to the one year statutory maximum). If the Federal agency determines that the statutory one year maximum has passed, the Federal agency may determine that a waiver has occurred. As discussed in section V.G in this preamble, a Federal agency may determine that a constructive waiver has occurred only if a certifying authority fails to take one of the four decisions described in this proposal within the reasonable period of time. Consistent with the 1971 Rule and 2020 Rule, the Agency is proposing to reaffirm that a waiver of certification occurs if the certifying authority fails to act within the reasonable period of time. *See* 40 CFR 121.9(a)(2)(i), 40 CFR 121.16(b) (2019). Similar to the approach in the 2020 Rule, the Agency is proposing to retain regulatory text describing how the Federal agency must communicate its waiver determination to the project proponent and certifying authority. *See* 40 CFR 121.9(c). If a Federal agency determines that the

certification decision was not issued within the reasonable period of time, the Federal agency shall notify the certifying authority and project proponent in writing that a waiver has occurred. Similar to the 2020 Rule, *see* § 121.9(d), the Agency is also proposing to retain regulatory text that clarifies that such notification from the Federal agency satisfies the project proponent's obligations under section 401.

Consistent with this approach, EPA is also proposing targeted conforming revisions to its part 124 and part 122 regulations, where these regulations allow EPA to find that a certifying authority waived its right to certify or waived a certification condition for reasons other than those specified in proposed § 121.8 (failure to act on a request for certification within the reasonable period of time). EPA is proposing to delete 40 CFR 124.53(e), which allows EPA to waive certification conditions that do not meet the requirements of § 124.53(e)(2) or (3). EPA is also proposing to delete § 124.53(e) because its approach to the contents of certification differs from proposed § 121.7, as explained in at the end of preamble section V.F.4. EPA is also proposing to revise 40 CFR 124.55(c), which allows EPA to waive certification conditions or denials that are based on State law allowing a less stringent permit condition. EPA is proposing to delete the second sentence of § 124.55(c), which allows EPA to waive a certification denial or condition, but the first sentence would not be affected by this proposal. EPA is proposing to revise 40 CFR 122.44(d)(3), which allows EPA to waive certifications that are stayed by a court or state board under certain circumstances. EPA proposing to delete the second and third sentences, which concern certification waiver. EPA intends that certification waivers for EPA-issued NPDES permits be governed by the certification waiver requirements in part 121.

The Agency recognizes that a constructive waiver is a severe consequence; as discussed in section V.G in this preamble, a waiver means the Federal license or permit may proceed without any input from the certifying authority. EPA encourages Federal agencies, project proponents, and certifying authorities to communicate early and often to prevent inadvertent waivers due to passage of time. If Federal agency review reveals that a certifying authority has inadvertently failed to act within the reasonable period of time, EPA encourages Federal licensing and permitting agencies to extend the reasonable period of time (provided it does not exceed one year from the receipt of the certification request) to allow certifying authorities an opportunity to make a certification decision.[48] Providing this opportunity would be consistent with cooperative federalism principles central to section 401 while respecting the statute's clear direction that the reasonable period of time may not exceed one year from the receipt of a request for certification. 33 U.S.C. 1341(a)(1).

Aside from providing that a waiver occurs if the certifying authority does not act within the reasonable period of time, the statute does not provide direction on what should occur if a certifying authority fails to meet the other facial requirements in section 401. As discussed earlier, the legislative history indicates that Congress added the waiver provision to prevent ''sheer inactivity'' by a certifying authority from holding up the licensing or permitting process. *See* H.R. Rep. No. 91–940, at 54–55 (March 24, 1970) (Conf. Report). Consistent with the statutory language and legislative history, EPA believes that Congress intended such an extreme outcome only in situations where certifying authorities fail or refuse to make a decision, and not where a certifying authority, otherwise attempting to make a timely decision, fails to comply with other facial requirements of section 401. Case law also provides support for the Federal agency asking the certifying authority to either demonstrate that its decision meets section 401's facial requirements or remedy the situation instead of deeming any such failure an automatic waiver of certification. *See City of Tacoma,* 460 F.3d at 68–69 (''FERC should seek an affirmation from Ecology that it complied with state law notice requirements when it issued its water quality certification or, if it did not, that it has done so in response to this decision.'').

If a Federal agency determines that a section 401 certification decision does not meet the certifying authority's public notice procedures, pursuant to proposed § 121.9(b), the Federal agency must notify the certifying authority of the deficiency and provide the certifying authority with an opportunity to remedy the noted deficiency. If necessary, the Federal agency must extend the reasonable period of time to provide the certifying authority with an opportunity to remedy the deficiency, but the reasonable period of time may not exceed one year from the receipt of the certification request.

If Federal agency review reveals that the wrong certifying authority issued the certification, EPA recommends that the Federal agency notify the project proponent that it must seek certification from the appropriate certifying authority before the Federal license or permit may be issued. As noted above, section 401 requires a project proponent to seek certification from the jurisdiction in which the discharge originates or will originate. 33 U.S.C. 1341(a)(1). Therefore, it is incumbent on the project proponent to identify and seek certification or waiver from the proper certifying authority before it may obtain a Federal license or permit.

If a Federal agency determines that a section 401 certification decision does not clearly indicate whether it is a grant, grant with conditions, denial, or express waiver, pursuant to proposed § 121.9(b), the Federal agency must notify the certifying authority of the deficiency and provide the certifying authority with an opportunity to remedy it. Under EPA's proposed rulemaking, if necessary, the Federal agency must extend the reasonable period of time to provide the certifying authority with an opportunity to remedy the deficiency, subject to the caveat that the reasonable period of time may not exceed one year from the receipt of the certification request. EPA expects that a certifying authority would be able to clarify its intended decision for the Federal agency upon request.

EPA is requesting comment on whether the Agency should develop procedures regarding how a certifying authority should respond to a Federal agency's notice regarding deficiencies in its certification decision. For example, should EPA provide a timeframe for the certifying authority to affirmatively respond to the Federal agency's notice of deficiency and provide a justification for any extension to the reasonable period of time (*e.g.,* length of the public notice period)? EPA also is requesting comment on all aspects of its proposed rulemaking regarding Federal agency review and its understanding of the potential consequences of Federal agency review.

H. EPA's Roles Under Section 401

Section 401 identifies a number of specific roles for EPA. First, EPA acts as the certifying authority on behalf of states or tribes that do not have ''authority to give such certification.'' 33

[48] Allowing certifying authorities to remedy deficiencies if there is time remaining in the reasonable period of time is consistent with EPA's position in the joint memo with the Army addressing Corps permits. U.S. EPA and Department of the Army, Clean Water Act Section 401 Certification Implementation Memorandum, at 6 (August 19, 2021).

U.S.C. 1341(a)(1). Second, EPA is responsible for notifying other states or authorized tribes that may be affected by a discharge from a federally licensed or permitted activity, and where required, for providing an evaluation and recommendations on such other state or authorized tribe's objections. *Id.* at 1341(a)(2). Lastly, EPA is responsible for providing technical assistance upon request from Federal agencies, certifying authorities, or Federal license or permit applicants. *Id.* at 1341(b). This section focuses on EPA's role as a certifying authority and in providing technical assistance. EPA's role under section 401(a)(2) is discussed in detail in section V.K in this preamble.

1. EPA's Role as a Certifying Authority

EPA is proposing to revise the part 121 regulations to provide greater clarity about EPA's process when it acts as the certifying authority. Pursuant to section 401 of the CWA, EPA acts as the certifying authority on behalf of states or tribes that do not have ''authority to give such certification.'' 33 U.S.C. 1341(a)(1). The 1971 Rule required EPA to provide certification in two scenarios: first, where EPA promulgated standards pursuant to section 10(c)(2) of the 1970 Water Quality Improvement Act; and second, where water quality standards have been established, but no state or interstate agency has authority to provide certification. 40 CFR 121.21 (2019). As discussed in section IV.A in this preamble, the 1971 Rule was promulgated prior to the enactment of the 1972 CWA amendments; as a result, the language in the 1971 Rule regarding EPA as a certifying authority does not reflect the amended text of section 401. In the 2020 Rule, EPA updated this provision with new regulatory text that indicates that EPA provides certification consistent with the 1972 statutory text and notes that EPA is required to comply with part 121 when it acts as a certifying authority. 40 CFR 121.13.

EPA is proposing minor, conforming modifications to current § 121.13(a) and (b). Specifically, consistent with the language in section 401(a)(1), the Agency is proposing to reaffirm that EPA is required to provide certification where no state, tribe, or interstate agency has the authority to provide certification or a waiver. *See* proposed § 121.16(a). The Agency is also proposing to reaffirm that, when it acts as a certifying authority, EPA must comply with both section 401 and the proposed requirements in part 121. *See* proposed § 121.16(b). Alternatively, EPA is requesting comment on whether it needs to clarify in regulatory text the circumstances under which it would act as a certifying authority, or whether the statutory language is clear enough that it ''speaks for itself.''

Currently, EPA acts as the certifying authority in two scenarios: (1) On behalf of tribes without ''treatment in a similar manner as a state'' (TAS) and (2) on lands of exclusive Federal jurisdiction. In the first scenario, if a tribe does not obtain TAS for section 401, EPA acts as the certifying agency for any federally licensed or permitted activity that may result in a discharge that originates in Indian country lands. As discussed in section V.L in this preamble, a tribe may obtain TAS for section 401 for the purpose of issuing water quality certifications. When EPA certifies on behalf of tribes without TAS, its actions as a certifying authority are informed by its tribal policies and the Federal trust responsibility to federally recognized tribes. EPA's 1984 Indian Policy, recently reaffirmed by EPA Administrator Regan, recognizes the importance of coordinating and working with tribes when EPA makes decisions and manages environmental programs that affect Indian country. *See* EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984), available at *https://www.epa.gov/sites/default/files/2015-04/documents/indian-policy-84.pdf; see also* Memorandum from Michael S. Regan to All EPA Employees, Reaffirmation of the U.S. Environmental Protection Agency's Indian Policy (September 30, 2021), available at *https://www.epa.gov/system/files/documents/2021-09/oita-21-000-6427.pdf.* This includes coordinating and working with tribes on whose behalf EPA reviews and acts upon requests for certification on federally licensed or permitted projects.

In the second scenario, EPA acts as the certifying authority in situations where the Federal Government has exclusive jurisdiction over certain lands. Exclusive Federal jurisdiction is obtained in multiple ways, including (1) where the Federal Government purchases land with state consent to jurisdiction, consistent with article 1, section 8, clause 17 of the U.S. Constitution; (2) where a state chooses to cede jurisdiction to the Federal Government; and (3) where the Federal Government reserved jurisdiction upon granting statehood. *See Collins* v. *Yosemite Park Co.,* 304 U.S. 518, 529–30 (1938); *James* v. *Dravo Contracting Co.,* 302 U.S. 134, 141–42 (1937); *Surplus Trading Company* v. *Cook,* 281 U.S. 647, 650–52 (1930); *Fort Leavenworth Railroad Company* v. *Lowe,* 114 U.S. 525, 527 (1895). It is important to note that lands of exclusive Federal jurisdiction do not include lands where the Federal Government and a state, tribe, or interstate agency share jurisdictional responsibility.

While 16 U.S.C. Chapter 1 identifies multiple national parks as lands of exclusive Federal jurisdiction,[49] EPA does not maintain a map or list delineating all lands of exclusive Federal jurisdiction. In the preamble to the 2020 Rule, EPA noted that the number and extent of lands under exclusive Federal jurisdiction are subject to change and stated that it is the obligation of the project proponent to determine the identity of the appropriate certifying authority when seeking section 401 certification. 85 FR 42270 (July 13, 2020). Because such status is subject to change, EPA is not proposing to provide an exclusive list of lands subject to exclusive Federal jurisdiction. However, EPA is considering development of guidance to help stakeholders identify such areas. EPA is requesting comment on whether it should attempt to provide a list of lands subject to exclusive Federal jurisdiction or whether there are other examples or categories of lands of exclusive Federal jurisdiction that EPA should recognize, aside from the national parks identified in 16 U.S.C. Chapter 1, as lands of exclusive Federal jurisdiction.

Consistent with the 2020 Rule, under this proposal, when EPA acts as the certifying authority, it is subject to the same requirements as other certifying authorities (*e.g.,* reasonable period of time to act on a request for certification) under section 401 and 40 CFR 121. In contrast to the 2020 Rule, this proposal does not retain the request for additional information provisions included in § 121.14 when EPA is the certifying authority. Under the 2020 Rule, EPA introduced limits on EPA's ability, as a certifying authority, to request additional information from a project proponent once the reasonable period of time began. These provisions include a requirement that EPA must initially request additional information within 30 days of receiving a request for certification and limitations on the type and scope of additional information EPA may request. 40 CFR 121.14(a)–(c). Additionally, the 2020 Rule requires EPA to provide the project proponent with a deadline to respond to request for

[49] These appear to include Denali National Park and Preserve, Yellowstone National Park, Yosemite National Park, Sequoia National Park, Crater Lake National Park, Glacier National Park, Rocky Mountain National Park, Mesa Verde National Park, Lassen Volcanic National Park, Great Smoky Mountains National Park, Mammoth Cave National Park, and Isle Royale National Park.

additional information and acknowledges that a project proponent's failure to provide additional information neither extends the reasonable period of time, nor prevents EPA from acting on the request for certification. *Id.* at § 121.14(d)–(e).

EPA proposes to remove § 121.14 in its entirety because it finds these provisions not conducive to an efficient certification process for several reasons. The preamble to the 2020 Rule stated that it was ''reasonable to assume that Congress intended some appropriate limits be placed on the timing and nature of such requests [for additional information]'' because of the overarching statutory timeline. 85 FR 42271. Yet, neither the 2020 Rule preamble nor its regulatory text articulates how a 30-day limitation on EPA's initial request for additional information is compelled or even consistent with the statutory limitation that a certifying authority must act within a reasonable period of time. Although it is ideal for EPA to have relevant information to inform its analysis early in the reasonable period of time, various questions or needs may arise later in the review process that are critical to EPA acting on a request for certification. There is nothing in the statutory language that compels or even suggests that EPA should have a limited ability to use the reasonable period of time to request additional information to evaluate a request for certification and make a fully informed decision. If the Agency is limited in its ability to request additional information to inform its decision, it may need to deny a request for certification instead of utilizing the additional information to possibly grant certification. Such an outcome would unnecessarily impede the Federal license or permitting process.

The current regulatory language also unnecessarily injects ambiguity into the certification process. Section 121.14(b) limits requests for additional information to that which is ''directly related to the discharge'', while § 121.14(c) limits requests only to information than can be ''collected or generated within the reasonable period of time.'' Yet neither phrase is defined nor explained in the preamble or regulatory text to the 2020 Rule which introduces uncertainty into what kind of information EPA could actually request. Furthermore, the statutory language and this proposal already place a number of limitations on all certifying authority decisions. As proposed in § 121.7(b), all certifying authorities, including EPA, must act within the reasonable period of time and within the scope of certification. EPA finds that these proposed regulatory requirements are sufficient to ensure the Agency will act on requests for certification in a timely and appropriate manner.

Consistent with the Agency's proposal to remove the aforementioned limitations on EPA's ability to request additional information, EPA is also proposing to remove the provisions at § 121.14(d) and (e), which discuss how EPA and project proponents must respond to requests for additional information or lack thereof. The Agency is requesting comment on whether EPA should provide, either through guidance or in regulation, its expectations regarding communication with project proponents when EPA is a certifying authority.

EPA is proposing to retain and update the provision regarding the certification public notice and hearing process when EPA is the certifying authority, currently located at § 121.15. The statutory language of section 401(a)(1) requires states and interstate agencies to establish procedures for public notice and hearings. The D.C. Circuit has held that certifying authorities have an obligation to provide public notice on certification requests. *See City of Tacoma,* 460 F.3d at 67–68. The 1971 Rule stated that EPA could provide public notice either by mailing notice to state and local authorities, state agencies responsible for water quality improvement, and ''other parties known to be interested in the matter'' (including adjacent property owners and conservation organizations), or, if mailed notice is deemed ''impracticable,'' by publishing notice in a newspaper of general circulation in the area where the activity is proposed. 40 CFR 121.23 (2019). With regard to hearings, the 1971 Rule provided that the Regional Administrator with oversight for the area of the proposed project has discretion to determine that a hearing is ''necessary or appropriate,'' and that ''[a]ll interested and affected parties'' would have reasonable opportunity to present evidence and testimony at such hearings. *Id.* EPA updated this provision in the 2020 Rule to expand the scope of possible parties that may receive notice to avoid unintentionally narrowing the list of potentially interested parties. 85 FR 42271. Additionally, under the 2020 Rule, EPA has placed a timeframe on when the Agency must provide public notice following receipt of a certification request and retained discretion to provide for a public hearing as necessary or appropriate. *Id; See* 40 CFR 121.15.

In proposed § 121.17, EPA is proposing to retain the public notice provision from the 2020 Rule with revisions to facilitate participation by the broadest number of potentially interested stakeholders and clarify that following such public notice, the Administrator shall provide an opportunity for public comment. The 1971 Rule allowed the Agency to either provide notice to a list of possible interested parties through mail, including adjacent property owners and heads of state agencies responsible for water quality improvement, or provide notice in a ''newspaper of general circulation in the area in which the activity is proposed to be conducted.'' 40 CFR 121.23 (2019). As mentioned previously, the 2020 Rule removed this 1971 Rule provision that may have unintentionally narrowed the list of stakeholders who may wish to receive notice on projects seeking certification. However, the 2020 Rule defines an appropriately broad list of potentially interested stakeholders (*e.g.,* parties known to be interested in the proposed project). *See* 40 CFR 121.15(a). Additionally, the 1971 Rule limited the means for providing public notice to mail and newspaper circulation and may also unintentionally limit access to notice on such projects, particularly as stakeholders increasingly rely more on digital means of communication. Accordingly, EPA is proposing in § 121.17 to provide public notice on receipt of a request for certification and broader public participation by not specifying the particular manner(s) in which that notice will occur. Aligning with the commitment to empower communities, protect public health and the environment, and advance environmental justice in Executive Orders 13990 and 12898, the proposal allows for outreach designed to reach all potentially interested stakeholders, including population groups of concern (*e.g.,* minority and low-income populations as specified in Executive Order 12898 and indigenous peoples, as identified in EPA technical guidance [50] as a population group of concern. The Agency encourages doing so by using all appropriate means and methods. This proposed approach will allow EPA greater flexibility to address on a case-by-case basis specific issues regarding

[50] EPA's Technical Guidance for Assessing Environmental Justice in Regulatory Action identifies population groups of concern including indigenous peoples and group as those identified under E.O. 12898 (minority and low-income populations) as well as sub-populations that may be at greater risk for experiencing adverse effects, including those that rely on fish/wildlife for subsistence, age groups, and gender groups (p. 6).

notice, such as broadband access issues and requirements for regional publications. Additionally, EPA is not proposing to provide in regulatory text an exhaustive list or examples of potentially interested parties to avoid unintentionally excluding some interested stakeholders on that list. EPA generally believes those stakeholders to whom it is appropriate to provide public notice may include state, tribal, county, and municipal authorities, heads of state agencies responsible for water quality, adjacent property owners, and conservation organizations. EPA is requesting comment on whether it should specify in regulatory text a list of stakeholders to whom notice of a certification request should be given.

Second, EPA is proposing to provide public notice within 20 days following receipt of a certification request. The 1971 Rule did not set a time frame for EPA's public notice after receiving a certification request. In contrast, the 2020 Rule states that EPA would provide public notice 20 days from receipt of a certification request. In EPA's view, continuing to provide a time frame for EPA's issuance of public notice following a receipt of a certification request will contribute to better accountability, transparency, and certainty with respect to EPA's handling of certification requests. Generally, EPA views it will be able to provide public notice within the proposed timeframe. EPA finalized an identical timeframe under the 2020 Rule, which it has been able to meet without difficulty in most instances. EPA is requesting comment on whether this 20-day time frame is reasonable, whether EPA should provide notice sooner or later, or whether it is even necessary to provide a time frame in regulatory text.

EPA is proposing that once the Administrator provides public notice on receipt of a request for certification, the Administrator must provide an opportunity for public comment. EPA is not proposing to define the length of the public comment period. Rather, EPA believes the appropriate timeframe for comment is more appropriately determined on a case-by-case basis, considering project-specific characteristics. In general, EPA anticipates a 30-day comment period; however, comment periods as short as 15 days or as long as 60 days may be warranted in some cases, based on the nature of the project.

EPA may also hold a public hearing after it provides public notice on receipt of a request for certification. EPA is proposing to retain with minor modifications the public hearing provision currently located at § 121.15(b). For context, the 1971 Rule provided that the Regional Administrator may hold a public hearing at their discretion. 40 CFR 121.23 (2019). Although ''[a]ll interested and affected parties'' have the opportunity to present evidence and testimony at a public hearing, the scope of the hearing is limited to the question of ''whether to grant or deny certification.'' *Id.* The 2020 Rule carries forward the position that the Agency has discretion to determine whether a public hearing is necessary or appropriate; however, the 2020 Rule removes the limitation on the subject matter of the public hearing. Consistent with the 2020 Rule, under § 121.17(b) of this proposal, stakeholder input at public hearings may cover any relevant subject matter on the proposed project to best inform EPA as it makes its certification decision. EPA is requesting comment on the proposed public hearing provision in general.

The Agency is also providing further insight on its plans to incorporate environmental justice into its role as a certifying authority. As discussed in section IV in this preamble, the Agency intends for this proposal to address essential water quality protection policies identified in Executive Order 13990, including environmental justice. In addition to the policy directive from Executive Order 13990, other Executive orders emphasize the importance of advancing environmental justice in Federal agency actions. *See* E.O. 12898, 59 FR 7629 (February 11, 1994) (directing agencies 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 and low-income populations in the United States), E.O. 14008, 85 FR 7619 (January 27, 2021) (expanding on the policy objectives established in E.O. 12898 and directing Federal agencies to develop programs, policies, and activities to address the disproportionately high and adverse human health environmental, climate-related and other cumulative impacts on vulnerable, historically marginalized, and overburdened communities, as well as the accompanying economic challenges of such impacts).[51]

Consistent with these directives and EPA technical guidance, when EPA acts as a certifying authority, the Agency should consider impacts on minority, low-income, indigenous communities who disproportionately bear the burdens of environmental pollution and hazards. In considering impacts from a federally licensed or permitted project, water quality related impacts on population groups of concern are issues that fall within the relevant scope of analysis and should inform decision-making on requests for certification. Specifically, the Agency intends to consider the extent to which the ''activity as a whole'' or any discharge may cause water quality-related effects with the potential to impact population groups of concern. Additionally, as discussed above, the Agency finds that broadening the public notice provision will provide communities seeking to advance environmental justice with greater opportunities to inform the certification process. The Agency invites comment on ways the Agency can further incorporate environmental justice and related concerns into its certification process, including whether the Agency should develop any regulatory text to this effect.

2. EPA's Role as a Technical Advisor

Section 401(b) provides certifying authorities, project proponents, and Federal agencies with the ability to ask EPA for technical advice on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and any methods to comply with such limitations, standards, regulations, requirements, or criteria. *See also* H.R. Rep. No. 92–911, at 124 (1972) (''The Administrator may perform services of a technical nature, such as furnishing information or commenting on methods to comply with limitations, standards, regulations, requirements, or criteria, but only upon the request of a State, interstate agency, or Federal agency.''). The 1971 Rule acknowledged this role but limited it to provision of technical advice on water quality standards. 40 CFR 121.30 (2019). In the 2020 Rule, the Agency modified this provision to expand the scope of technical advice and assistance EPA might provide to better align with the statutory text. 85 FR 42274–75 (July 13, 2020).

Therefore, consistent with the scope of section 401(b), EPA is proposing to revise the regulatory text currently at § 121.16 to reflect the statutory text more directly. Under this proposal, EPA shall provide technical advice, upon request by a Federal agency, certifying authority, or project proponent, on (1) applicable effluent limitations, or other limitations, standards (including water

[51] The Agency also finalized and published the fiscal year (FY) 2022–2026 EPA Strategic Plan in March 2022, which includes new environmental justice strategic goals and emphasis to be embedded in all EPA work. *See https://www.epa.gov/planandbudget/strategicplan.*

quality standards such as water quality criteria), regulations, or requirements, and (2) any methods to comply with such limitations, standards, regulations, or requirements. *See* proposed § 121.18. Federal agencies, certifying authorities, and project proponents may request EPA's technical assistance at any point in the certification process.

EPA does not intend this proposal to give EPA the authority to make certification decisions for states and authorized tribes, or to independently review state or tribal certifications or certification requests. *See* H.R. Rep. 92–911, at 124 (1972) (''The Committee notes that a similar provision in the 1970 Act has been interpreted to provide authority to the Administrator to independently review all State certifications. This was not the Committee's intent. The Administrator may perform services of a technical nature, such as furnishing information or commenting on methods to comply with limitations, standards, regulations, requirements or criteria, but only upon request of a State, interstate agency or Federal agency.''). Nor does the Agency consider its role under section 401(b) to include providing monetary or financial support to certifying authorities in implementing their section 401 programs. The Agency observes that there are other means for certifying authorities to seek financial assistance for their water quality certification programs (*e.g.,* CWA section 106 grants). The Agency requests comments on whether any additional procedural steps should be described in regulatory text, such as the manner in which certifying authorities, Federal agencies, and project proponents may request technical assistance.

I. Modifications

The Agency is proposing to reintroduce a certification modifications provision. Prior to the 2020 Rule, the Agency's longstanding 1971 Rule allowed certification modifications to occur after a certification is issued, provided the certifying authority, Federal agency, and the EPA Regional Administrator agree to the modification. 40 CFR 121.2(b) (2019). In response to stakeholder recommendations and pre-proposal input to allow certification modifications, the Agency is proposing a process similar to the 1971 Rule that allows a certifying authority to modify a certification after reaching an agreement to do so with the Federal licensing or permitting agency (but not EPA).

CWA section 401 does not expressly authorize or prohibit modifications of certifications; nor does it preclude the certifying authority from participating in the licensing or permitting process after the issuance of a certification. *See* 33 U.S.C. 1341(a)(3)–(a)(5).

In a significant change from prior practice, the 2020 Rule removes the 1971 Rule's modification provision in its entirety and shifts the obligation to define when certification modifications are allowed to the Federal licensing or permitting agency. 85 FR 42278 (July 13, 2020). However, the 2020 Rule does not interpret the statutory silence in section 401 as prohibiting all modifications. Rather, the 2020 Rule preamble asserts that section 401 does not provide EPA an oversight role in the modification process or authorize ''unilateral'' modifications by certifying authorities. *Id.* The 2020 Rule preamble acknowledges that certification modifications could occur through other mechanisms (*e.g.,* as provided in other Federal regulations), and encourages Federal agencies to establish procedures in regulation ''to clarify how modifications would be handled in these specific scenarios.'' *Id.* at 42279.

Beyond modifications to existing certifications, the 2020 Rule preamble also suggests there might be circumstances that warrant the submission of a *new* request for certification, such as ''if certain elements of the proposed project (*e.g.,* the location of the project or the nature of any potential discharge that may result) change materially after a project proponent submits a certification request.'' *Id.* at 42247. The Agency declined to identify in the 2020 Rule itself specific circumstances that might warrant the submission of a new certification request. After promulgation of the 2020 Rule, the Agency did not issue any further guidance on which situations warranted a new certification request (as opposed to modification of the existing certification through other Federal agency processes).

In its 2021 **Federal Register** document, EPA expressed concern ''that the [2020 Rule's] prohibition of modifications may limit the flexibility of certifications and permits to adapt to changing circumstances.'' 86 FR 29544. Stakeholders have expressed similar concerns, noting that minor changes may occur in the project that may not rise to a level that requires a new certification (*e.g.,* needing to extend the certification's ''expiration'' date to match a permit extension, or shifting the certified ''work window'' to reduce the amount of work occurring during high-flow periods), but may be significant enough to warrant a modification of the certification. During pre-proposal outreach, certifying authorities, project proponents, and non-governmental organizations expressed support for a certification modification process that balances transparency and an ability to adapt to new information. While some project proponents requested flexibility to adapt to changing circumstances, they noted that any rulemaking should limit unilateral actions a certifying authority may take to modify a certification after issuance.

In response to stakeholder recommendations to allow certification modifications, the Agency is proposing a process similar to the 1971 Rule that allows a certifying authority to modify a previously granted certification (with or without conditions) after reaching an agreement to do so with the Federal licensing or permitting agency. *See* proposed § 121.10.

The proposed approach is also consistent with section 401's temporal limitations on when a certifying authority may act on a certification request. The statute requires a certifying authority to act on a request for certification within a reasonable period of time not to exceed one year. 33 U.S.C. 1341(a)(1). As discussed in section V.F in this preamble, the Agency interprets the term ''to act on a request for certification'' to mean the certifying authority must make a decision to grant, grant with conditions, deny, or expressly waive certification. Under this proposed rulemaking, a certification modification could occur after the reasonable period of time in which the original certification decision was made.[52] The Agency does not view allowing such modifications as contrary to the text of, or Congressional intent supporting, the reasonable period of time limitation. First, on its face, the reasonable period of time limitation only applies to the certifying authority's action on the request for certification. The statute is silent regarding whether it also applies to modifications. Second, in imposing the reasonable period of time limitation, Congress was concerned by the potential for the certifying authority's ''sheer inactivity'' to delay the project. *See* H.R. Rep. 92–911, at 122 (1972). That concern is not present with modifications because the certifying authority will have already acted on the request. Moreover, the Agency's proposal requires that the Federal agency also agree to initiate the modification process.

EPA intends that, as used here, a modification means a change to an

[52] *See* discussion of reasonable period of time in section V.D in this preamble regarding extensions of the reasonable period of time, not to exceed one year from receipt of the request for certification.

element or portion of a certification or its conditions; it does not mean the wholesale reversal of a certification decision. For example, if a certifying authority has previously waived certification, that waiver may not be modified because there would be no ''certification'' to modify. Thus, a certifying authority may not ''modify'' a waiver by changing it into a grant, a grant with conditions, or a denial. Similarly, a denial of certification cannot be modified into a grant (with or without conditions) of certification. Furthermore, under this proposed rulemaking, a previously granted certification (with or without conditions) cannot be converted into a waiver or denial of certification because EPA considers a modification to be a change to an element or portion of a certification, not a reconsideration of the decision whether to certify. Constraining certifying authorities from fundamentally changing their certification action (*e.g.,* changing a grant into a denial or vice versa) through a modification process recognizes reliance interests and promotes regulatory certainty. Further, EPA has concerns that changing the fundamental nature of the certification action (*e.g.,* change a grant, denial, or waiver to something entirely different) may be inconsistent with the Congressional admonition to act on a certification request within the statutory reasonable period of time.

The Agency is proposing that the ability to modify a certification be subject to two further limitations. First, similar to the 1971 Rule, the certifying authority and the Federal agency must agree in writing that a modification should be made. Second, the certifying authority may modify only those portions of the certification that the two parties agree should be modified. Both of these limitations are discussed below.

First, EPA is proposing that a modification may only occur where a Federal agency and certifying authority agree in writing that the certification should be modified. The parties would have to agree that one or another part of the certification should be modified; they would not have to agree to the specific language of such modification. Unlike the 1971 Rule, the Agency is not proposing to include EPA in the certification modification process where the Agency is neither the certifying authority nor the Federal licensing or permitting agency. As noted in the 2020 Rule preamble, the statute does not expressly provide EPA with a role in the modification process, unlike the Agency's other roles under section 401.[53] *See* 85 FR 42278 (July 13, 2020). Additionally, although the 1971 Rule provides the Agency with an oversight role in the modification process, the preamble to the 1971 Rule does not explain why the Agency was given such a role. *See* 36 FR 8563–65 (May 8, 1971). As such, the Agency does not see the need for such a role now, especially where EPA was not involved in the original certification decision and is not the relevant Federal permitting agency. EPA is proposing that it should not have an oversight role in the certification modification process. Consistent with the 1971 Rule, the Agency is also not proposing to require that the project proponent agree to the modification. However, the Agency anticipates that project proponents may still play some part in the modification process (*e.g.,* notifying the certifying authority when it thinks a modification may be appropriate). The Agency is requesting comment on whether the regulations should provide project proponents with a more explicit and expansive role in the modification process.

Because the Agency is reintroducing a provision similar to the 1971 Rule's collaborative approach to modifications (albeit without EPA's involvement), the proposal would not allow for unilateral modifications by certifying authorities. This is consistent with the 2020 Rule. While the statutory language and legislative history appear to countenance a role for certifying authorities after a certification is issued, EPA does not think that role includes unilateral action to modify a certification.[54] Rather, the certifying authority's actions under sections 401(a)(3)–(a)(4) depend on the existence of either a preceding or subsequent Federal agency action. *See* 33 U.S.C. 1341(a)(3)–(a)(4). The Agency does not view conditions in the original certification that require ongoing or future monitoring or modeling activities, including when paired with clearly defined adaptive management response actions, as unilateral certification modifications. Such conditions merely put project proponents and Federal agencies on notice at the time of certification that future adaptive management implementation actions might be needed.[55]

The Agency is not proposing to define the specific circumstances in which a Federal agency and certifying authority may agree to modify a certification. During the pre-proposal input period, stakeholders said they need more flexibility than the 2020 Rule provides for modifications such as correcting typographical errors, changing a point of contact, or adjusting a certification's expiration date. The Agency invites comment on other scenarios or reasons for certification modifications.

The last proposed limitation on a certification modification is that the certifying authority may only modify those portions of the certification that the Federal agency agrees may be modified. For example, if a Federal agency and certifying authority agree that a modification is necessary to fix a typographical error in the certification, the certifying authority may only modify that aspect of the certification. EPA recommends that the modification process be collaborative and that any modification be limited by the nature of the Federal agency and certifying authority's agreement. However, EPA is not suggesting that Federal agencies and certifying authorities must collaborate on the specific language of the certification modification. Rather, EPA's proposal contemplates that the certifying authority and the Federal agency agreement would identify those portions of the certification decision that the certifying authority would modify, and then the certifying authority would be responsible for drafting the modification language. The Agency is requesting comment on an alternative approach whereby the actual language of the certification modification would be agreed upon by both the Federal agency and the certifying authority.

EPA is not proposing to place regulatory limitations on the point in time that certification modifications may occur. Rather, the Agency expects this proposal to provide the opportunity for certification modification at any point after certification issuance, provided the Federal agency and the certifying authority agree to make the modification. EPA is requesting comment on this approach. EPA is also

[53] *See* section V.H in this preamble discussing EPA's specific roles identified in section 401, including acting as a certifying authority on behalf of jurisdictions lacking authority, notifying other jurisdictions where their water may be affected by a discharge from another jurisdiction, and providing technical assistance upon request.

[54] *See* 33 U.S.C. 1341(a)(3)–(a)(4); *Keating* v. *Federal Energy Regulatory Comm'n,* 927 F.2d 616, 621–22 (D.C. Cir.1991) (summarizing section 401(a)(3)); *see also* 115 Cong. Rec. 9257, 9268–9269 (April 16, 1969) (discussing a hypothetical need for a state to take another look at a previously certified federally licensed or permitted activity where circumstances change between the issuance of the construction permit and the issuance of the operation permit).

[55] *See* section V.F for further discussion on the importance of certification conditions and adaptive management, particularly where future water quality-related impacts may occur due to climate change or other events.

requesting comment on whether, in the interest of finality and reliance, there should be a temporal limitation on the ability to modify certifications. EPA is also requesting comment on whether the certification modification process should account for (1) whether there is a Federal license or permit modification process already in place and (2) the point in time at which a modification may be made (*e.g.,* if new information supporting a modification arises either before or after issuance of the final license or permit).

EPA is also proposing to delete 40 CFR 124.55(b), which describes the circumstances under which a modification may be made to a certification on an EPA-issued NPDES permit. The approach to modifications in § 124.55(b) differs significantly from the approach proposed at § 121.10. In many respects, it is more limited. For instance, § 124.55(b) allows modifications after permit issuance only at the request of the permittee and only to the extent necessary to delete any conditions invalidated by a court or appropriate state board or agency. In one way, it is broader because it does not require EPA as the Federal permitting agency to agree to the modification. EPA intends for all certification modifications, including for EPA-issued NPDES permits to follow the approach discussed above and proposed at § 121.10. EPA is requesting comment on whether it should allow a certifying authority to unilaterally modify any certification, including but not limited to certifications for EPA-issued NPDES permits, in circumstances under which there is a change in State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate state board or agency stays, remands, or vacates a certification after license or permit issuance. *See* 40 CFR 124.55(b).

Given the pre-proposal stakeholder input and the Agency's experience with certification modifications, the Agency is proposing to reintroduce a modification process for certifications, provided the certifying authority and Federal agency agree that a modification is necessary. By proposing this collaborative and adaptive process, EPA expects that certifying authorities and Federal agencies (as well as project proponents) will have the flexibility they need to adapt to changing circumstances or new information, while recognizing the need to protect reliance interests and promote transparency.

J. Enforcement and Inspections

This section of the preamble discusses a number of issues that have arisen with respect to enforcement of the requirement to obtain CWA section 401 certifications and enforcement of certification conditions. The Agency is addressing these issues in response to stakeholder concern and confusion over how the 2020 Rule addresses CWA section 401 enforcement. EPA is not proposing to retain any regulatory text regarding enforcement of the requirement to obtain section 401 certification or enforcement of certification conditions.[56] Nevertheless, in light of the significant pre-proposal input EPA received on this issue, EPA will discuss some of the more common concerns that have been identified regarding enforcement of the requirement to obtain section 401 certification and enforcement of certification conditions and seek further comment and input from stakeholders. To be clear, EPA is not offering new interpretations or positions on most of the issues discussed below. EPA does, however, invite comment on whether any of the interpretations or positions or judicial holdings identified below should be expressed in regulatory language in the final rule, specifically the interpretations on the enforceability of certification conditions by Federal agencies and certifying authorities; the judicial holdings regarding the application of the CWA citizen suit provision to certifications and certification conditions; and the interpretation of the term ''review'' in CWA section 401(a)(4).

1. General Enforcement Issues

Section 401 contains three provisions directly relevant to enforcement. First, section 401(a)(4) provides certifying authorities with an opportunity, prior to operation, to inspect a certified federally licensed or permitted activity or facility that does not require a Federal operating license to assure its operation will not violate water quality requirement. 33 U.S.C. 1341(a)(4). If the certifying authority determines that the operation will violate applicable water quality requirements, the Federal agency may suspend the license or permit after a public hearing. *Id.* Second, section 401(a)(5) provides that any certified Federal license or permit may be ''suspended or revoked'' by the Federal agency ''upon the entering of a judgment under [the CWA] that such facility or activity has been operated in violation'' of the enumerated sections of the CWA. *Id.* at 1341(a)(5). Third, section 401(d) provides that certification conditions ''shall become a condition on any Federal license or permit subject to the provisions of this section.'' *Id.* at 1341(d).

Of these three provisions, the 1971 Rule only included regulatory text on section 401(a)(4), as discussed below in the section on inspection authority. The 1971 Rule did not contain any regulatory provisions addressing section 401(a)(5) or section 401(d) (the latter of which was not added to the statute until the 1972 amendments). The 2020 Rule addresses section 401(d) and section 401(a)(4). Regarding section 401(d), the 2020 Rule states that the Federal agency ''shall be responsible for enforcing certification conditions'' incorporated into its license or permit. Regarding section 401(a)(4), the 2020 Rule allows the pre-operation inspection under section 401(a)(4) of all certified projects, regardless of whether they had received a subsequent Federal operating license or permit. *See* 85 FR 42275–76. The 2020 Rule preamble also stated that the ''CWA does not provide an independent regulatory enforcement role for certifying authorities,'' *id.* at 42275, and declined to finalize an interpretation regarding CWA section 505 citizen suits and section 401. *Id.* at 42277.

In EPA's notice of intent to revise the 2020 Rule, EPA requested stakeholder feedback on several enforcement related issues, including ''the roles of federal agencies and certifying authorities in enforcing certification conditions, whether the statutory language in CWA Section 401 supports certifying authority enforcement of certification conditions under federal law, whether the CWA citizen suit provision applies to Section 401, and the rule's interpretation of a certifying authority's inspection opportunities.'' 86 FR 29543 (June 2, 2021). In pre-proposal input, stakeholders generally agreed that Federal agencies could enforce certification conditions. However, stakeholders expressed concern that the 2020 Rule prevents states and tribes from exercising their independent enforcement authority and relied solely on Federal agencies to enforce certification conditions. Several stakeholders expressed concern that Federal agencies may not be willing or able to enforce certification conditions incorporated into their Federal licenses or permits due to resource limitations (*e.g.,* staff, funding, time). Conversely, a few stakeholders asserted that certifying authorities did not have an enforcement role either under section 401 or any other provision of the CWA, including

[56] EPA is proposing regulatory text regarding Federal agency review of certification decisions. *See* section V.G for further discussion.

section 505. Other stakeholders asserted that section 505 provided for citizen suit enforcement of both failures to obtain section 401 certification and failure to comply with certification conditions.

EPA observes that this proposal is generally focused on interpreting the text of section 401 itself, which does not directly address state or tribal enforcement authority. Consistent with the approach taken in the 2020 Rule, this rulemaking does not propose interpretations of other enforcement-related sections of the CWA, such as section 505. As such, the Agency is not inclined to propose regulatory text to address state or tribal enforcement authority with respect to section 401 or the CWA's citizen suit provision. Nevertheless, EPA invites comment on whether it should do so in the final rule and, if so, what regulatory language it should include.

The Agency views section 401 certification conditions that are incorporated into the Federal license or permit as enforceable by Federal licensing or permitting agencies. Section 401(d) provides that certification conditions ''shall become a condition on any Federal license or permit.'' Because section 401 conditions become conditions of the Federal license or permit, the Federal agency may enforce any such conditions in the same manner as any other conditions of its license or permit. EPA expressed this interpretation in the 2020 Rule, 85 FR 42275–76, and a decade prior to that rulemaking. *See, e.g.,* 2010 Handbook, at 32 (rescinded). EPA also observes that Federal agencies have considerable latitude in deciding whether and when to enforce requirements and conditions in their licenses and permits. *See Heckler* v. *Cheney,* 470 U.S. 821, 831 (1985) (discussing why it is important for agencies to retain enforcement discretion).

The Agency has consistently taken the view that nothing in section 401 precludes states from enforcing certification conditions when so authorized under state law. In the 2020 Rule preamble, the Agency concluded that ''[n]othing in this final [2020] rule prohibits States from exercising their enforcement authority under enacted State laws.'' EPA did, however, consider this authority limited to ''where State authority is not preempted by federal law.'' 85 FR 42276. A decade prior to the 2020 Rule, EPA had already recognized that states enforce certification conditions when authorized to do so under state law. *See e.g.,* 2010 Handbook, p. 32–33 (rescinded) (''Many states and tribes assert they may enforce 401 certification conditions using their water quality standards authority.''). EPA is not proposing to retain the regulatory text currently located at § 121.11(c) which expressly states that Federal agencies ''shall be responsible'' for enforcing certification conditions placed in the Federal license or permit. The regulatory text at § 121.11(c) introduces ambiguity into the Agency's longstanding position that nothing in section 401 precludes states from enforcing certification conditions when authorized under state law, and has led to stakeholder confusion over whether the 2020 Rule prevents states and tribes from exercising their independent enforcement authority and whether the 2020 Rule limited Federal agency discretion regarding their enforcement of section 401 conditions in their permits.

With respect to CWA citizen suits and their application to section 401 certifications and conditions, the Agency observes that there is some case law discussing this issue. First, the Ninth Circuit Court of Appeals has held that citizen suits may be brought to enforce the requirement to obtain certification. *Or. Natural Desert Ass'n* v. *Dombeck,* 172 F.3d 1092, 1095 (9th Cir. 1998). In *Dombeck,* the court rejected the argument that section 505 authorizes only suits to enforce certification conditions but not the requirement to obtain a certification. The court pointed to the plain language of section 505, which cross-references the entirety of section 401 (and not, for example, only section 401(d), which concerns certification conditions). *Id.* Second, a few Federal courts have held that certification conditions can be enforced through CWA citizen suits. In *Deschutes River Alliance,* a U.S. district court considered the issue at length and ultimately held that CWA section 505 authorizes citizens to enforce certification conditions. *See Deschutes River Alliance* v. *Portland Gen. Elec. Co.,* 249 F. Supp. 3d 1182, 1188 (D. Or. 2017). Relying in part on *Deschutes River Alliance,* another U.S. district court also considered the issue in depth and held that the CWA citizen suit provision provides citizens a cause of action to sue to enforce the conditions of a section 401 certification. *Pub. Emps. for Envtl. Responsibility* v. *Schroer,* No. 3:18–CV–13–TAV–HBG, 2019 WL 11274596, at *8–10 (E.D. Tenn. June 21, 2019). EPA is not aware of any Federal court that has considered the issue and reached the opposite conclusion.

EPA notes that *Deschutes River Alliance* also held that certifying states may enforce certification conditions via the CWA citizen suit provision. 249 F. Supp. 3d at 1191–92. The court reasoned that section 505 is the only provision of the CWA that could bestow Federal authority upon states to enforce certification conditions and, given this, interpreting section 505 to preclude state enforcement of certification conditions would run ''contrary to the CWA's purpose and framework.'' *Id.* at 1191.

2. Certifying Authority Inspection Authority

As discussed above, section 401(a)(4) identifies one set of circumstances where the certifying authority may review the manner in which a facility or activity will operate once the facility or activity has received certification. 33 U.S.C. 1341(a)(4). The certifying authority's review is limited to determining if the post-construction operation of the facility or activity will ensure that applicable effluent limitations, other limitations, or other applicable water quality requirements will not be violated. Section 401(a)(4) further states that upon notification by the certifying authority that the operation or activity will violate effluent limits, other limits or other water quality requirements, the Federal agency, after public hearing, may suspend the license or permit and the license or permit shall remain suspended until there is reasonable assurance that the facility or activity will not violate CWA sections 301, 302, 303, 306 or 307. *Id.*

The 1971 Rule clarified that the ability to ''review the manner in which the facility or activity shall be operated or conducted'' meant the right to inspect a facility or activity, and that the inspection is limited to a situation where there was a construction license or permit and a subsequent operating license or permit was not required. The 1971 Rule set forth the procedure regarding inspection and subsequent inspection findings; however, these regulations only apply where EPA is the certifying authority. *See* 40 CFR 121.26–121.28 (2019). The 2020 Rule interprets section 401(a)(4) to apply to all certifying authorities. It also expands the ability to conduct inspections pursuant to section 401(a)(4) to any certified project where the license or permit and certification were issued prior to operation, instead of only for projects where there was a construction license or permit and a subsequent operating license or permit was not required. 40 CFR 121.11(a); 85 FR 42277. In pre-proposal input, several stakeholders pressed the Agency to

allow for inspections before, during, and post-operation.

EPA thinks that the 2020 Rule incorrectly interprets the limited applicability of section 401(a)(4) and does not think the statutory language needs further clarification through rulemaking. Accordingly, EPA is proposing to remove § 121.11(a)–(b) in the current regulation. On its face, section 401(a)(4) applies to a limited circumstance where there is a Federal license or permit and certification issued *prior to* operation of the facility or activity and there is *not* a subsequent Federal operating license or permit necessary for the facility or activity to operate. Under these limited circumstances, the statute is clear that the licensee or permittee must provide the certifying authority with the ability to ''review'' the facility or activity to determine whether it will comply with effluent limitations, other limitations, or other water quality requirements. EPA interprets the term ''review'' found in section 401(a)(4) to be broad enough to include inspection, but not necessarily limited to inspection. It can arguably also include the right to review preliminary monitoring reports or other such records that will assist the certifying authority in determining whether the operation of the facility or activity will comply with effluent limitations, other limitations, or other water quality requirements. EPA is requesting comment on whether it should articulate this interpretation of section 401(a)(4) in regulatory text.

EPA emphasizes that section 401(a)(4) does not necessarily limit the certifying authority's ability to inspect facilities or activities before or during operation in accordance with the certifying authority's laws and regulations. The Agency is aware that states and tribes may have their own authority to inspect a facility or activity to determine compliance with conditions set forth in a section 401 certification. Similarly, section 401(a)(4) does not necessarily limit a Federal agency's ability to inspect a facility during the life of the permit or license pursuant to that Federal agency's laws and regulations.

K. Neighboring Jurisdictions

Section 401(a)(2) establishes a process for ''neighboring jurisdictions'' to participate in the Federal licensing or permitting process in circumstances where EPA has determined that a discharge from an activity subject to certification from another jurisdiction ''may affect'' their water quality. EPA is revising the definition of the term ''neighboring jurisdiction'' to clarify that it includes ''any state, or tribe with treatment in a similar manner as a state for CWA section 401 in its entirety or only for CWA section 401(a)(2), other than the jurisdiction in which the discharge originates or will originate.'' *See* proposed § 121.1(i).[57] The current definition of ''neighboring jurisdiction'' located at § 121.1(i) inaccurately suggests that a neighboring jurisdiction may only include a state or TAS tribe that EPA determines may be affected by a discharge from another jurisdiction. However, a neighboring jurisdiction does not obtain its status as a neighboring jurisdiction based upon EPA's ''may affect'' determination. It instead obtains such status by being a jurisdiction other than the one where the discharge originates or will originate. Ultimately, a Federal license or permit may not be issued until the section 401(a)(2) process is complete.

To initiate the section 401(a)(2) process, a Federal licensing or permitting agency must ''immediately'' notify EPA when it receives a license or permit application and a section 401 certification. 33 U.S.C. 1341(a)(2). EPA then has 30 days from the date it receives that notification to determine whether a discharge from the activity may affect the water quality of a neighboring jurisdiction and, if so, to notify that neighboring jurisdiction, the licensing or permitting agency, and the project proponent.[58] After receiving notice from EPA, the neighboring jurisdiction has 60 days to determine whether the discharge ''will affect'' its water quality so as to violate its water quality requirements, and if so, object in writing to the issuance of the license or permit and request that the licensing or permitting agency conduct a hearing on its objection. *Id.* When the licensing or permitting agency conducts a hearing under section 401(a)(2), EPA must submit to the licensing or permitting agency an evaluation and recommendations regarding the objection of the neighboring jurisdiction. In turn, section 401(a)(2) requires the licensing or permitting agency to condition the relevant license or permit ''as may be necessary to insure compliance with applicable water quality requirements,'' based upon the recommendations of the neighboring jurisdiction and EPA, and any additional evidence presented at the hearing. If ''the imposition of conditions cannot insure such compliance,'' the licensing or permitting agency shall not issue the license or permit. *Id.*

Section 401(a)(2) limits EPA to considering whether a ''discharge'' from an activity may affect the water quality of a neighboring jurisdiction, and likewise limits a neighboring jurisdiction to determining whether a ''discharge'' from the activity will affect its water quality so as to violate any water quality requirements. Accordingly, EPA interprets the scope of section 401(a)(2) as limited by the statutory language to considering potential effects only from a ''discharge'' from an activity.

Pre-proposal feedback relating to the process established in section 401(a)(2) reflected the need for more specificity regarding the roles of the Federal licensing or permitting agency, EPA, and the neighboring jurisdiction in the process, and the steps within the process. As a result, EPA is providing more detail and explanation in this proposal on the roles of each of these participants in the section 401(a)(2) process and the steps involved. Additionally, to promote consistency and efficiency, EPA is updating the 2020 Rule to provide greater clarity regarding how the section 401(a)(2) process is initiated and conducted.

1. Federal Licensing or Permitting Agency's Role in Initiating the Section 401(a)(2) Process

CWA section 401(a)(2) requires that the Federal licensing or permitting agency, upon receipt of a license or permit application and the related section 401 water quality certification, immediately notify the EPA Administrator of such certification and application. 33 U.S.C. 1341(a)(2). The 1971 Rule established some procedural requirements for this process,[59] which EPA updated in 2020. The 2020 Rule includes additional specificity on the timing of Federal agency notification but did not contain a standardized process for notification. 40 CFR 121.12(a). Instead, the Agency relies on Federal agencies to develop notification

[57] Tribes without TAS to administer section 401 or section 401(a)(2) are not neighboring jurisdictions for purposes of section 401(a)(2), as the statutory language limits the section 401(a)(2) process specifically to states. However, EPA is proposing a process for tribes to attain TAS specifically for administering a water quality certification program under section 401 and for administering only the section 401(a)(2) portion of a water quality certification program. *See* proposed § 121.11. Further, in the absence of TAS for either section 401 or 401(a)(2), tribes may participate in the public notice process for a section 401 water quality certification.

[58] *Fond du Lac Band of Lake Superior Chippewa* v. *EPA* determined that the statutory language of section 401(a)(2) does not allow EPA to decline to make a determination whether or not a discharge from the certified project may affect water quality in a neighboring jurisdiction, and further found that EPA's ''may affect'' determination is judicially reviewable under the APA. 519 F.Supp.3d 549, 565, 567 (D. Minn. 2021).

[59] *See* 40 CFR part 121, subpart B (2019).

processes and procedures that work within their licensing or permitting programs. 85 FR 42273.

The Agency is proposing to clarify what actions initiate the section 401(a)(2) process and when Federal agencies must provide notification to EPA under section 401(a)(2). Additionally, the Agency is proposing procedures for Federal agencies to follow when providing notification to EPA. Section 401(a)(2) provides that the Federal licensing or permitting agency must ''immediately'' notify the EPA Administrator upon receipt of an application and certification. 33 U.S.C. 1341(a)(2). Under the 1971 Rule, EPA's section 401(a)(2) review was initiated upon receipt of either a certification or a waiver, which was treated as a substitute for certification. *See* 40 CFR 121.11, 121.16 (2019). In the 2020 Rule, EPA's section 401(a)(2) review is initiated upon receipt of a certification. 40 CFR 121.12(a); *see* 85 FR 42287. As discussed below, EPA is proposing to return to the approach taken in the 1971 Rule at proposed § 121.12.

Although the statutory text does not explicitly identify waiver of certification as an action that initiates section 401(a)(2) review,[60] the Agency proposes that it is appropriate to treat the waiver of certification as a substitute for a grant of certification for purposes of section 401(a)(2) review for several reasons. First, this treatment is consistent with the purpose of section 401(a)(2). Section 401(a)(2) provides neighboring jurisdictions with an opportunity to object to federally licensed or permitted discharges originating in other jurisdictions, where they determine the discharge will violate their water quality requirements. A waiver does not indicate a certifying authority's substantive opinion regarding the water quality implications (for itself or another jurisdiction) of a proposed activity or discharge. Rather, a certifying authority may waive certification for a variety of reasons, including a lack of resources to evaluate the project. In addition, a certifying authority may be deemed to have waived certification for various reasons, including if that certifying authority fails or refuses to act on a request for certification before the end of the reasonable period of time. *See* section V.F in this preamble for further discussion on waivers. Ultimately a waiver of certification allows the Federal licensing or permitting agency to issue its license or permit without receipt of a water quality certification. As a result, a waived certification could result in water quality impacts that might violate a neighboring jurisdiction's water quality requirements. It seems reasonable to afford a mechanism for EPA and a neighboring jurisdiction to evaluate that possibility. Second, this approach is consistent with the Agency's approach to section 401(a)(2) for over 50 years. *See* 40 CFR 121.16 (2019). Therefore, consistent with the approach taken in the 1971 Rule, the Agency is proposing to restore the interpretation that waivers, in addition to certifications, initiate the section 401(a)(2) process.

Additionally, the Agency is proposing to clarify the term ''application'' as applied to section 401(a)(2). Section 401(a)(2) requires a Federal licensing or permitting agency to notify EPA upon receipt of application and certification. 33 U.S.C. 1341(a)(2). Section 401 uses the term ''application'' throughout section 401(a); however, when read in context, the term is used for both ''applications for certification'' and ''applications for such Federal license or permit.'' The Agency considers the ''request for certification'' to be an ''application for certification.'' *See* section V.C in this preamble for further discussion on a request for certification. In the context of section 401(a)(2), the term ''application'' is used to refer to the ''application for such Federal license or permit.'' *Id.* As a result, section 401(a)(2) is initiated upon the Federal licensing or permitting agency's receipt of such Federal license or permit application *and* either a section 401 certification or a waiver of certification. However, the Agency is aware that there are instances where a Federal license or permit application does not accompany a certification or waiver (*e.g.,* certification on general permits or Corps civil works projects). To account for Federal agencies' different licensing or permitting practices, the Agency is proposing to clarify that the term ''application'' in this regulation means the license or permit application to a Federal agency, or if available, a draft license or permit.[61] *See* proposed § 121.1(c).

As noted, the Agency is further seeking to clarify when a Federal agency must provide notification to EPA under section 401(a)(2) and is proposing basic procedures for Federal agencies to follow when providing such notification. As discussed above, section 401(a)(2) provides that the Federal licensing or permitting agency must ''immediately'' notify the EPA Administrator upon receipt of an application for a Federal license or permit and certification. *See* 33 U.S.C. 1341(a)(2). EPA seeks to clarify that a Federal agency is only considered to be in receipt of an application for a license or permit and certification within the meaning of section 401(a)(2) when such agency has received *both* an application for a license or a permit, as discussed above, *and* has either received a corresponding certification or a waiver has occurred.[62] It is typical for Federal agencies to receive applications for licenses or permits in advance of receipt of certification or waiver. In such circumstances, it would be premature for the Federal agency to provide EPA with notification under section 401(a)(2) until it has also received the certification or waiver has occurred and the statute accordingly only requires notification to EPA when the certifying agency is in possession of both.[63]

Furthermore, to aid in clarity and implementation, the Agency is proposing to retain the 2020 Rule interpretation of ''immediately'' to mean within five days of the Federal agency's receipt of the application for a Federal license or permit and either receipt of certification or waiver. Under the 2020 Rule, the Agency also interprets the term ''immediately'' to mean within five days of the Federal agency receiving notice of application and certification to encourage clear, consistent timing of the notification to EPA. 40 CFR 121.12(a); *see* 85 FR 42273. The Agency is not aware of any practical challenges or issues posed by this timeframe. The Federal agency needs some amount of time to process receipt of the permit or license application and certification or waiver from the project proponent or certifying authority, review the received materials, which might be substantial, and then transmit notice to the appropriate EPA regional office. EPA considers five days a prompt yet

[60] *See* section 401(a)(2) (''Upon receipt of such *application and certification* the licensing or permitting agency shall immediately notify the Administrator of such *application and certification*.'') (emphasis added).

[61] For this proposed rulemaking, EPA is not suggesting that Corps civil works projects are exempt from section 401(a)(2) processes, even though there are no ''applications'' or draft licenses or permits. Rather, EPA expects the Corps to determine how best to comply with all section 401 requirements. Compliance may involve the Corps sending a project study in conjunction with a certification or a waiver of certification.

[62] Although this statutory language is unambiguous, EPA is further discussing when receipt occurs due to questions and conflicting practices among Federal licensing and permitting agencies.

[63] It is necessary that certification or waiver occur for EPA to make a determination as to whether a discharge from the activity ''may affect'' the water quality of a neighboring jurisdiction under section 401(a)(2), as EPA only makes such a determination where certification or waiver has occurred, and considers any conditions included in a certification in making this determination.

reasonable amount of time to complete this process. EPA is soliciting comment on whether it should interpret ''immediately'' in this context to mean a different period of time than five days, and whether five days provides Federal agencies with sufficient time to provide notice to EPA or if additional time is required.

Although the text of section 401(a)(2) requires a Federal agency to notify EPA upon receipt of an application and certification, it does not define the contents of such notification. 33 U.S.C. 1341(a)(2). The 1971 Rule and 2020 Rule provided some direction on information that could be submitted to EPA as part of the section 401(a)(2) process, but neither regulation defined the contents of the section 401(a)(2) notification. *See* 40 CFR 121.12(b); 40 CFR 121.13 (2019).

The 1971 Rule provided that upon receipt of application for a license or permit with an accompanying certification, the Federal agency shall forward copies of the application and certification to the Regional Administrator. 40 CFR 121.11 (2019). It further stated that only those portions of the application which relate to water quality shall be forwarded to the Regional Administrator and allows for the Regional Administrator to ask for supplemental information if the documents forwarded do not contain sufficient information to make the determination provided for in § 121.13. *See* 40 CFR 121.12 and 121.13 (2019). In the preamble to the 2020 Rule, EPA said it expects Federal agencies to develop notification processes and procedures but noted that the Administrator could request copies of the certification and application. 85 FR 42273. During implementation of the 2020 Rule, some but not all agencies have developed their own procedures, and these procedures have varied between agencies and across the country.

To provide consistency and to streamline the notification process, EPA is proposing to add regulatory text defining the minimum level of information that must be included in the notification to EPA. The Agency is proposing that the notification be in writing and contain a general description of the proposed project, including but not limited to: permit or license identifier, project location information (*e.g.,* latitude and longitude), a project summary including the nature of any discharge and size or scope of activity, and whether the Federal agency is aware of any neighboring jurisdiction providing comment on the project. If the Federal agency is aware that a neighboring jurisdiction provided comment on the project, the notification shall include a copy of those comments. Additionally, the notification shall include a copy of the certification or notice of waiver, and the application, as defined at proposed § 121.1(c). If supplemental information is needed to make a determination pursuant to section 401(a)(2), the Regional Administrator may ask for it in writing with a timeframe for a response, and the Federal agency shall obtain that information from the project proponent and forward the additional information to the Regional Administrator within the specified timeframe. If supplemental information is not provided in a timely manner, EPA may consider that lack of information as a factor in its ''may affect'' determination. The Agency may also develop agreements with Federal agencies to refine the notification process and the provision of supplemental information. The Agency is soliciting comment on the proposed aspects of the notification process, including the timing and the contents of the Federal agency notification to EPA.

2. EPA's Role Under Section 401(a)(2)

Section 401(a)(2) states that whenever a discharge ''may affect, as determined by the Administrator, the quality of the waters of any other State,'' the Administrator must notify the other neighboring jurisdiction, Federal agency, and the project proponent of their determination within thirty days of the date of notice of the application. 33 U.S.C. 1341(a)(2). Under the 1971 Rule, the Regional Administrator was required to review the Federal license or permit application, the certification, and any supplemental information provided to EPA, and, if the Regional Administrator determined that there was ''reason to believe that a discharge may affect the quality of the waters of any State or States other than the State in which the discharge originates,'' the Regional Administrator would notify the affected jurisdictions within thirty days of receipt of the application materials and certification. *See* 40 CFR 121.13 (2019).

Similarly, the 2020 Rule acknowledges EPA's responsibility to notify a neighboring jurisdiction whenever it determined that a discharge from the certified activity may affect the water quality of the neighboring jurisdiction. 40 CFR 121.12(b), 85 FR 42274. However, the 2020 Rule asserted that it was within the Agency's discretion whether to make a ''may affect'' determination in the first place, and that EPA was, therefore, not required to make such a determination. 85 FR 42273. Additionally, the 2020 Rule does not clearly state in either regulatory text or the preamble whether there are specific factors that the Administrator must consider in making a ''may affect'' determination and whether any other interested party can be involved when EPA is making a ''may affect'' determination. *Id.* During the pre-proposal outreach, stakeholders raised concerns that EPA had not clearly identified what factors it intended to use in determining whether a discharge ''may affect'' the water quality of a neighboring jurisdiction. Stakeholders also objected to EPA asserting sole discretion over this ''may affect'' determination without obtaining input from the neighboring jurisdiction or other stakeholders.

To date, only one Federal district court has addressed EPA's obligation to make a determination pursuant to section 401(a)(2). In *Fond du Lac,* the court addressed two issues concerning section 401(a)(2): (1) whether EPA is required to make a ''may affect'' determination and (2) whether EPA's ''may affect'' determination is judicially reviewable. 519 F.Supp.3d 549.The court concluded that EPA is required to determine whether the discharge may affect the quality of a neighboring jurisdiction's waters. In coming to this conclusion, the court examined the statutory text and found that it requires EPA to make ''a discrete factual determination . . . within a specific timeframe . . . based on an application and certification . . . .'' *Id.* at 564. The court further concluded that Federal courts have the jurisdiction to review EPA's ''may affect'' determination. The court did not opine on the specific meaning of ''may affect'' means or factors that EPA should consider in making a ''may affect'' determination.

EPA agrees with the *Fond du Lac* court that EPA must determine whether a discharge ''may affect'' a neighboring jurisdiction once it receives notification of the application and certification or waiver, and EPA is proposing to revise the regulation accordingly. When EPA is the Federal licensing or permitting agency (*e.g.,* EPA-issued NPDES permits), EPA intends to include such ''may affect'' determination in the administrative record for the permit action. EPA is further proposing that, in making a ''may affect'' determination, EPA has the discretion to look at a variety of factors depending on the type of license or permit and discharge. Factors that EPA could consider in making a ''may affect'' determination include, but are not limited to, the type of project and discharge covered in the license or permit, the proximity of the project and discharge to other

jurisdictions, certification and other conditions already contained in the draft license/permit, and the neighboring jurisdiction's water quality requirements. Given the range of Federal licenses or permits that are covered by CWA section 401(a)(2) and EPA's discretion to look at various factors, EPA is not proposing to identify specific factors EPA must analyze in making a ''may affect'' determination. Indeed, as each ''may affect'' determination is likely to be fact-dependent and based on situation-specific circumstances, EPA is uncertain that providing a required list of factors is possible. However, in the interest of transparency, EPA is asking for comment on whether such a list of specific factors that EPA must consider in making a ''may affect'' determination should be set forth in regulation and, if so, what factors should be included.

EPA is further clarifying that, once it receives notice from a Federal agency initiating its obligation to make a ''may affect'' determination, it is within EPA's sole discretion to examine the facts and determine whether the discharge ''may affect'' the quality of a neighboring jurisdiction's waters. Section 401(a)(2) provides that ''[w]henever such a discharge may affect, *as determined by the Administrator*. . . .'' 33 U.S.C. 1341(a)(2) (emphasis added). EPA interprets this language as providing the Agency with sole discretion in making a ''may affect'' determination. Accordingly, EPA is not required to engage with stakeholders or seek their input in making this determination. If an interested party does not agree with EPA's determination, that interested party may have recourse under the Administrative Procedure Act as discussed in *Fond du Lac.* However, in making its ''may affect'' determination, the Agency does intend to consider the views of other jurisdictions if provided in a timely manner. As discussed above, the Agency is proposing to define the contents of a Federal agency's notification to EPA to include an indication of whether any neighboring jurisdictions have expressed water quality concerns or provided such comment on the project.[64] Other factors informing the Agency's ''may affect'' determination evaluation are discussed above, including the nature of the neighboring jurisdiction's water quality requirements.

After receiving notification from the Federal licensing or permitting agency, EPA has 30 days to complete its ''may affect'' determination evaluation. 33 U.S.C. 1341(a)(2). If EPA determines that the discharge may affect a neighboring jurisdiction's water quality, EPA must notify the neighboring jurisdiction, the Federal licensing or permitting agency, and the project proponent. *Id.* EPA is proposing to retain regulatory text similar to 40 CFR 121.12(c) that clarifies which stakeholders EPA must notify upon making a ''may affect'' determination. The Agency is also proposing to define the contents of such notification similar to the 2020 Rule. The 1971 Rule did not define the contents of a ''may affect'' notification from EPA to a neighboring jurisdiction, Federal agency, and project proponent. However, the 1971 Rule provided that EPA must send the neighboring jurisdiction a copy of the application and certification it received to initiate the section 401(a)(2) process. 40 CFR 121.14 (2019). The 2020 Rule defines the contents of EPA's notification. 40 CFR 121.12(c)(1). EPA is proposing to revise the provision from the 2020 Rule and clarify that its notification shall be in writing and shall include a statement that the Agency has determined that the discharge may affect the neighboring jurisdiction's water quality, as well as a description of the next steps in the section 401(a)(2) process, a copy of the certification or waiver, and a copy of the license or permit application. *See* proposed § 121.13. The proposed regulation also retains similar text as the 2020 Rule that, once EPA makes a ''may affect'' determination, a Federal license or permit may not be issued pending the conclusion of the section 401(a)(2) process, as described in further detail below. Accordingly, the Agency is proposing to remove the regulatory provision located at § 121.9(e) which provides that a Federal agency may issue a license or permit upon issuance of a written notice of waiver. As discussed above, waivers also trigger the section 401(a)(2) process and EPA may make a ''may affect'' determination based upon a waiver of certification. Consistent with the proposed language at § 121.13(d), a Federal agency may not issue a Federal license or permit until the section 401(a)(2) process concludes.

Upon completion of its ''may affect'' determination evaluation, if EPA does not find that a discharge from the activity may affect the water quality of a neighboring jurisdiction, then EPA is not required to provide notification of its determination. *See* 33 U.S.C. 1341(a)(2). If a Federal licensing or permitting agency does not receive notification from EPA that the discharge may affect a neighboring jurisdiction's water quality within 30 days after proper notification, then the Federal agency may proceed with processing the license or permit.

3. Neighboring Jurisdiction's Role Under Section 401(a)(2)

CWA section 401(a)(2) states that if, within sixty days after receipt of EPA's notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such 60 day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. 33 U.S.C. 1341(a)(2). The 1971 Rule did not describe the contents or form that such an objection notification must take. However, the 2020 Rule clarifies that the objection notification must identify the receiving waters that are determined to be affected and identify the specific water quality requirements that will be violated. 40 CFR 121.12(c)(2); 85 FR 42274.

In this rule, EPA is proposing to revise the specific requirements for what a neighboring jurisdiction is required to include in an objection notification sent pursuant to section 401(a)(2). Initially, as required by the statute, the neighboring jurisdiction must act within 60 days of receipt of EPA's notification, and must provide its objection and request for public hearing in writing to EPA and the licensing and permitting authority. EPA is also proposing that the objection notification be sent to the certifying authority. Further, EPA is proposing that the neighboring jurisdiction include an explanation of the reasons supporting its determination that the discharge will violate its water quality requirements, including but not limited to identifying any water quality requirements that will be violated. This will allow EPA and the Federal licensing or permitting agency to understand the basis for the objection. EPA is not proposing to retain the regulatory text requiring the neighboring jurisdiction to identify the receiving waters that will be affected by the discharge. However, EPA anticipates this information will likely be included in the neighboring jurisdiction's explanation of the reasons supporting its determination that the discharge will violate its water quality requirements. EPA is not proposing to require the neighboring jurisdiction to identify a

[64] There are other opportunities for stakeholders to provide input into the certification and licensing or permitting process, including the public notice and comment processes on the certification and the license or permit.

license or permit condition that it thinks would resolve the objection; however, EPA encourages neighboring jurisdictions to offer such a condition or conditions and is requesting comment on whether this element should be required by regulation.

4. Objection and Public Hearing Process Under Section 401(a)(2)

As discussed above, a neighboring jurisdiction must request a public hearing from the Federal licensing or permitting agency as part of its objection. CWA section 401(a)(2) does not provide for a specific process for the section 401(a)(2) public hearing. It merely states that, if a neighboring jurisdiction objects to a Federal license or permit and requests a public hearing within the 60-day timeframe, the Federal licensing or permitting agency must hold a hearing. 33 U.S.C. 1341(a)(2). The statute further provides that the EPA Administrator must submit an evaluation and recommendations regarding the objection at the hearing. *Id.* In addition, section 401(a)(2) states that additional evidence may be presented at the hearing. After the public hearing, the Federal licensing or permitting agency must consider the recommendations of the neighboring jurisdiction and EPA Administrator as well as any additional evidence presented at the hearing and, based on that information, must condition the license or permit as may be necessary to ensure compliance with applicable water quality requirements. If additional conditions cannot ensure compliance with applicable water quality requirements, the license or permit cannot be issued. *Id.* Notably, the statute is silent as to whether public notice of the public hearing is required; the nature of, and specific procedures for, the public hearing; the need for a court reporter or transcript; whether the Federal licensing or permitting agency's decision is appealable; and other such matters.

The 1971 Rule provided that, in cases where the Federal licensing or permitting agency held a public hearing on the objection raised by a neighboring jurisdiction, the licensing or permitting agency was required to forward notice of such objection to the Regional Administrator no later than 30 days prior to the hearing. 40 CFR 121.15 (2019). At the hearing, the Regional Administrator was required to submit an evaluation and ''recommendations as to whether and under what conditions the license or permit should be issued.'' *Id.* EPA retained these requirements in the 2020 Rule. 40 CFR 121.12(c)(3); 85 FR 42274.

The Agency is proposing to add transparency to the section 401(a)(2) process by requiring the Federal agency to provide for a minimum of a 30-day public notice of the hearing. This will allow for notice to all interested parties, including the neighboring jurisdiction and EPA, and provide adequate time for such parties to determine whether they have any interest in attending the public hearing. EPA is not defining the type of public hearing that the Federal agency must hold since many Federal agencies have their own regulations regarding public hearings on permits and licenses; however, EPA recommends that the public hearing would be one at which the Federal agency accepts comments and additional evidence on the objection. EPA defers to the Federal agency to decide whether the public hearing would be conducted in-person and/or remotely through telephone, online, or other virtual platforms depending on the circumstances and the Federal agency's public hearing regulations.

As discussed, section 401(a)(2) provides that the EPA Administrator shall submit an evaluation and recommendations on the objection raised by the neighboring jurisdiction at the hearing conducted by the Federal licensing or permitting agency. The statutory text does not elaborate on how the Administrator is to develop its evaluation and recommendations or what specific elements it must include. Accordingly, the statute provides EPA with considerable discretion in developing its evaluation and recommendations.

EPA interprets its role in providing the evaluation and recommendations on the neighboring jurisdiction's objection as that of an objective and neutral evaluator providing recommendations to the licensing or permitting Federal agency based upon its expert, technical analysis of the record before it. EPA intends to conduct its evaluation and make any recommendations based on the information before it, giving equal consideration to the information and views—if provided—by interested parties, including the objecting neighboring jurisdiction, project proponent, and certifying authority. Consistent with this approach, as a general matter EPA does not intend to invite comment and input from, or engage with, interested parties when developing its evaluation and recommendations on the objection. However, EPA may, where it deems it appropriate, seek additional information from a neighboring jurisdiction regarding its objection to be sure EPA is able to develop an informed and well-supported evaluation and accompanying recommendations. This approach to developing its evaluation and recommendations is consistent with the hearing process established by section 401(a)(2), which recognizes a role for the neighboring jurisdiction independent of the Agency and allows for presentation of evidence at the hearing by any interested stakeholder, including the neighboring jurisdiction. If a stakeholder agrees or disagrees with EPA's evaluation and recommendations presented at the hearing, such stakeholder may have an opportunity to provide additional information and comment directly to the Federal agency for its consideration.

After conducting the public hearing, pursuant to CWA section 401(a)(2), the Federal licensing or permitting agency must consider the recommendations of the neighboring jurisdiction and EPA, as well as any additional evidence presented at the hearing, as it determines whether additional permit or license conditions are necessary to ensure compliance with applicable water quality requirements. 33 U.S.C. 1341(a)(2). The Act does not accord special status to EPA's evaluation and recommendations compared with the neighboring jurisdiction's input or other evidence received at the hearing; rather, the section appears to contemplate that the Federal agency will consider all of the information presented in making its decision. If the Federal licensing or permitting agency determines that additional conditions may be necessary to ensure compliance with the neighboring jurisdiction's water quality requirements, the Federal licensing or permitting agency must include those conditions in the Federal license or permit. In addition, if the Federal licensing or permitting agency cannot include conditions that will ensure compliance with applicable water quality requirements, the Federal agency cannot issue the license or permit. EPA is proposing to specifically incorporate these statutory requirements in regulatory language.

EPA is not, however, proposing to establish a deadline by which the Federal licensing or permitting agency must make a determination after the public hearing. EPA is requesting comment on whether such a deadline should be established.

CWA section 401(a)(2) states that if the neighboring jurisdiction notifies EPA and the licensing or permitting agency ''in writing of its objection to the issuance of [the] license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing.'' 33

U.S.C. 1341(a)(2). For a hearing to be required under section 401(a)(2), there must be (1) a written objection from the neighboring jurisdiction and (2) a request for a public hearing on the objection. *Id.* EPA is proposing that if one of these elements is not present, the Federal agency is not required to hold a hearing. If a neighboring jurisdiction can resolve its concerns with the Federal licensing or permitting agency before a public hearing is held, then under this proposed approach, the neighboring jurisdiction could withdraw its objection and, as a result, a public hearing would not be required. EPA does not assume that a withdrawal of a written objection would eliminate the need for the Federal licensing or permitting agency to comply with its own public notice requirements if resolution of the objection results in a change to the permit or license. EPA is requesting comment on whether a neighboring jurisdiction could withdraw its objection before the hearing is held and, thus, eliminate the requirement to hold a public hearing. EPA is also requesting comment on whether it should develop any regulatory text to clarify this aspect of the section 401(a)(2) process.

L. Treatment in a Similar Manner as a State Under Section 401

This proposed rulemaking would add provisions enabling tribes to obtain treatment in a similar manner as a state (TAS) solely for section 401, as well as provisions on how tribes can obtain TAS for the limited purpose of participating as a neighboring jurisdiction under section 401(a)(2). These proposed provisions provide more opportunities and clarity for tribes interested in participating in the section 401 certification process. Although the CWA clearly allows tribes to obtain TAS for section 401, current regulations and practice treat TAS for section 401 as an adjunct to TAS for the CWA section 303(c) program for water quality standards.

Section 401 specifies that certification under section 401(a)(1) shall be made by the state in which the discharge originates or will originate, or if appropriate, the interstate water pollution control agency with jurisdiction over the waters of the United States where the discharge originates or will originate. 33 U.S.C. 1341(a)(1). Likewise, under section 401(a)(2) the Administrator considers whether a discharge from a project may affect ''the quality of the waters of any other state'' in initiating the neighboring jurisdiction process. *Id.* at 1341(a)(2). Prior Agency guidance and the 2020 Rule preamble provided that only tribes with TAS for section 401 may act as certifying authorities under section 401(a)(1) and may act as neighboring jurisdictions under section 401(a)(2). 85 FR 42270, 42274; 2010 Handbook, at 6 (rescinded). The 1971 Rule did not address tribes with TAS; the TAS provisions in the CWA were not introduced until the 1987 CWA Amendments.

Under section 518 of the CWA, EPA may treat federally-recognized Indian tribes in a similar manner as a state for purposes of administering most CWA programs over Federal Indian reservations. 33 U.S.C. 1377. Under section 518 and EPA's implementing regulations, an Indian tribe is eligible for TAS to administer CWA regulatory programs, including section 401, if it can demonstrate that (1) it is federally-recognized and exercises governmental authority over a Federal Indian reservation;[65] (2) it has a governing body carrying out substantial governmental duties and power; (3) it has the appropriate authority to perform the functions to administer the program; and (4) it is reasonably expected to be capable of carrying out the functions of the program it applied to administer. *See* 33 U.S.C. 1377(e), (h); *see also, e.g.,* 40 CFR 131.8.

While certain CWA programs have TAS implementing regulations,[66] there are currently no such regulations tailored solely for section 401. In the absence of TAS provisions tailored specifically for section 401, tribes have received TAS for section 401 when eligible for TAS to administer the section 303(c) program for water quality standards. 40 CFR 131.4(c) (''Where EPA determines that a Tribe is eligible to the same extent as a State for purposes of water quality standards, the Tribe likewise is eligible to the same extent as a State for purposes of certifications conducted under Clean Water Act section 401.''). To date, 78 federally-recognized tribes (out of 574) have received TAS for section 401 concurrently with obtaining TAS for section 303(c).[67]

Upon receiving TAS for section 401, tribes have two roles. First, tribes that receive section 401 TAS are responsible for acting as a certifying authority for projects that may result in a discharge into waters of the United States on their Indian reservations. As certifying authorities, tribes with TAS may grant, grant with conditions, deny, or waive certification based on whether a federally licensed or permitted project will comply with sections 301, 302, 303, 306, and 307 of the CWA and any other appropriate requirements of tribal law. *See* 33 U.S.C. 1341(a)(1) and (d). Second, tribes that receive section 401 TAS are accorded the status of ''neighboring jurisdiction'' for purposes of section 401(a)(2). If EPA makes a ''may affect'' determination with respect to that neighboring jurisdiction, the neighboring jurisdiction, including tribes with TAS for section 401, may object to the Federal license or permit if they determine that the discharge ''will violate'' their water quality requirements and request a public hearing from the Federal licensing or permitting agency. 33 U.S.C. 1341(a)(2).

EPA is proposing a section 401-specific set of requirements and procedures for tribes seeking TAS for purposes of making sections 401(a)(1) and 401(d) certification decisions and for exercising their statutory rights as a ''neighboring jurisdiction'' under section 401(a)(2). These proposed procedures do not eliminate or modify the section 401 procedures already found in part 131. Instead, they provide an alternate path for tribes wishing to obtain TAS status only for section 401 and not also for section 303(c).

1. Obtaining TAS for Section 401

Proposed § 121.11 includes the criteria an applicant tribe would be required to meet to be treated in a similar manner as states, the information the tribe would be required to provide in its application to EPA, and the procedure EPA would use to review the tribal application. This section is intended to ensure that tribes treated in a similar manner as states for the purposes of the section 401 water quality certification program are qualified, consistent with CWA requirements, to implement a water quality certification program. The procedures are meant to provide more opportunities for tribes to engage fully in the program and are not intended to act as a barrier to tribal assumption of the section 401 program. The proposed procedures are modeled after the TAS regulatory provisions for the CWA section 303(c) WQS program, located at 40 CFR 131.8, and the TAS provisions

[65] ''Federal Indian reservation'' means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. 33 U.S.C. 1377(h)(1).

[66] For example, there are TAS regulatory provisions for the CWA section 303(c) water quality standards (WQS) program, located at 40 CFR 131.8, and for the CWA section 303(d) impaired water listing and total maximum daily load program, located at 40 CFR 130.16.

[67] *See https://www.epa.gov/tribal/tribes-approved-treatment-state-tas.*

for the CWA section 303(d) impaired water listing and total maximum daily load program, located at 40 CFR 130.16. The WQS TAS regulations, developed in the early 1990s, have acted as a model for other programs including the section 303(d) regulations. *See* 81 FR 65905. Additionally, as discussed above, EPA's TAS regulations allow tribes to simultaneously obtain TAS for sections 303(c) and 401 and have been used by 78 tribes to date. As a result, the Agency thinks the part 131 and part 130 TAS regulations provide an appropriate model for this proposal.

Consistent with the requirements provided in CWA section 518, EPA proposes that four criteria must be met for tribes to obtain TAS for section 401. First, the tribe should be federally recognized by the U.S. Department of the Interior and meet the definitions in proposed § 121.1(f) and (g). Second, the tribe should have a governing body that carries out ''substantial governmental duties and powers'' over a defined area. Third, the tribe should have appropriate authority to regulate and manage water resources within the borders of the tribe's reservation. Lastly, the tribe should be reasonably expected, in the Regional Administrator's judgment, to be capable of administering a section 401 water quality certification program.

The tribe may satisfy the first criterion by stating that it is included on the list of federally recognized tribes that is published periodically by the U.S. Department of the Interior. Alternatively, the tribe may submit other appropriate documentation (*e.g.,* if the tribe is not yet included on the U.S. Department of the Interior list but is federally recognized).

To meet the second criterion, the tribe would show that it conducts ''substantial governmental duties and powers,'' which the Agency views as performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographical area. *See* 54 FR 39101; 81 FR 65906. This requires a descriptive statement that should (1) describe the form of tribal government, (2) describe the types of essential governmental functions currently performed by the tribal governing body, including but not limited to, the exercise of the power of eminent domain, taxation, and police power, and (3) identify the sources of authorities to carry out these functions.

To establish the third criterion that the tribe has the authority to manage the water resources within the borders of the tribe's reservation, the tribe would submit a descriptive statement comprised of two components. First, the statement should include a map or legal description of the area over which the tribe has authority to regulate surface water quality. Second, there should be a statement signed by the tribe's legal counsel or equivalent explaining the legal basis for the tribe's regulatory authority. EPA notes that section 518 of the CWA includes a delegation of authority from Congress to eligible Indian tribes to regulate the quality of waters of their reservations under the CWA. *See* 81 FR 30183 (May 16, 2016). Absent rare circumstances that may affect a tribe's ability to effectuate the delegation of authority, tribes may rely on the congressional delegation of authority included in section 518 of the statute as the source of authority to administer a section 401 water quality certification program. This is identical to the manner in which tribes have been demonstrating authority for eligibility to administer 401 certifications under existing TAS regulations, the only change being that under the new proposed regulations, tribes would be able to seek TAS eligibility for section 401 only. Similarly, as with tribes already administering section 401 under prior TAS approvals, the authority to issue certifications exercised by a tribe authorized under the new proposed regulation will, by virtue of the congressional delegation, apply throughout the reservation area covered by the TAS approval, irrespective of land ownership or the tribal membership status of the Federal license applicant. *See, e.g.,* 81 FR 30190. Therefore, grants or waivers of certification by an authorized tribe, as well as any conditions included in a certification or denials of certification by an authorized tribe, would apply to any application for a Federal license throughout the relevant reservation without any separate need to demonstrate inherent tribal jurisdiction.

A tribe may satisfy the fourth criterion regarding its capability by either (1) providing a description of the tribe's technical and management skills to administer a water quality certification program or (2) providing a plan that proposes how the tribe will acquire such skills. Additionally, when considering tribal capability, EPA would also consider whether the tribe can demonstrate the existence of institutions that exercise executive, legislative, and judicial functions, and whether the tribe has a history of successful managerial performance of public health or environmental programs.

To provide direction on how a tribe may meet the criteria described above, EPA is also proposing to describe the contents of an application for TAS for section 401. *See* proposed 40 CFR 121.11(b). These contents include a statement that the tribe is recognized by the Secretary of the Interior, a descriptive statement that demonstrates the tribal government carries out substantial duties and powers, a descriptive statement of the tribe's authority to regulate water quality, and a narrative statement that describes the tribe's capability to administer a section 401 water quality certification program. Consistent with existing TAS regulations for other programs, the proposed rulemaking also provides that tribal applicants include additional documentation that may be required by EPA to support the tribal application. Each TAS application will present its own set of legal and factual circumstances, and EPA anticipates that in some cases it may be necessary to request additional information when reviewing a tribe's application. Such requests would, for instance, generally relate to ensuring that the application contains sufficient complete information to address the required statutory and regulatory TAS criteria. This could include, for instance, information relating to a unique issue pertaining to the applicant tribe or its reservation or an issue identified during the comment process described below. Consistent with longstanding practice, the Agency would work with tribes in an appropriately streamlined manner to ensure that their TAS applications contain all necessary information to address applicable statutory and regulatory criteria. If a tribe has previously qualified for TAS under another EPA program, the tribe is only required to submit information that was not previously submitted as part of a prior TAS application.

EPA is also proposing to describe EPA's procedures to review and process an application for section 401 TAS. *See* proposed 40 CFR 121.11(c). Under this proposal, once EPA receives a complete tribal application, it will promptly notify the tribe of receipt and process the application in a timely manner. Within 30 days after receipt of the tribe's complete application for section 401 TAS, EPA shall provide notice to appropriate governmental entities [68] of the application, including information on the substance of and basis for the tribe's assertion of authority to regulate reservation water quality. Appropriate

[68] EPA defines the term ''appropriate governmental entities'' as ''States, tribes, and other Federal entities located contiguous to the reservation of the tribe which is applying for treatment as a State.'' 56 FR 64876, 64884 (December 12, 1991).

governmental entities will be given 30 days to provide comment on the tribe's assertion of authority. Consistent with prior practice regarding such notice in connection with TAS applications for other programs, EPA also intends to provide sufficiently broad notice (*e.g.,* through local newspapers, electronic media, or other appropriate media) to inform other potentially interested entities of the applicant tribe's complete application and of the opportunity to provide relevant information regarding the tribe's assertion of authority. If the tribe's assertion of authority is challenged, EPA will determine whether the tribe has adequately demonstrated authority to regulate water quality on the reservation after considering all relevant comments received.

However, if a tribe previously qualified for TAS for another program that also required a tribe to demonstrate authority to regulate reservation water quality (*i.e.,* CWA section 303(c) program, CWA section 303(d) program, CWA section 402 program, or CWA section 404 program) and EPA provided a notice and comment opportunity, the Agency would not require notice on the tribe's assertion of authority to appropriate governmental entities in the section 401 TAS application unless there were different jurisdictional issues or significant new factual or legal information relevant to jurisdiction. EPA thinks this approach could help streamline the process and avoid a potentially duplicative notice process. The Agency is proposing to apply this approach prospectively only, *i.e.,* where the tribe obtains TAS for the CWA section 303(c), 402, or 404 programs after the effective date of this rule. In other words, if a tribe first gains TAS for another CWA regulatory program after this rule is finalized, and subsequently seeks TAS under this rule, additional notice and comment would not be required as part of the section 401 TAS application unless different jurisdictional issues or significant new factual or legal information relevant to jurisdiction are presented in the 401 application. If the Regional Administrator determines that a tribe's application meets the requirements proposed in § 121.11(b), the Regional Administrator would promptly notify the tribe in writing. A decision by the Regional Administrator that a tribe does not meet the requirements proposed in § 121.11(b) would not preclude the tribe from resubmitting the application at a future date. If the Regional Administrator determines that a tribal application is deficient or incomplete, EPA will identify such deficiencies and gaps so the tribe can make changes as appropriate and necessary.

Promulgating a regulation expressly providing a process and requirements for section 401 TAS in the absence of 303(c) TAS is consistent with section 518 and would provide clarity and increased opportunities for interested tribes to participate in section 401. Additionally, developing regulations on section 401 TAS as a standalone process for tribes seeking this authority who are not concurrently applying for section 303(c) TAS may encourage more tribes to seek TAS for section 401. Decoupling section 401 TAS from section 303(c) recognizes that section 401 and section 303 administration are related, but distinct functions and is responsive to tribal stakeholders who have expressed an interest in participating in the section 401 certification process. EPA is requesting comment on this more targeted proposed approach to obtaining TAS for section 401.

2. Obtaining TAS for Section 401(a)(2)

If a tribe receives TAS for section 401, it is treated in a manner similar to a state and considered an ''authorized tribe'' for purposes of exercising its statutory authority under section 401. Generally, the Federal statutory and the proposed regulatory requirements for state water quality certification would apply to authorized tribes, including acting as a certifying authority and neighboring jurisdiction, as appropriate. However, EPA is also proposing regulatory language that would allow a tribe to apply for TAS for only the limited purpose of being a neighboring jurisdiction under section 401(a)(2). As noted above, prior Agency guidance and the 2020 Rule preamble expressed the interpretation that only tribes with TAS status may participate as a neighboring jurisdiction under section 401.[69] This is because, unlike section 401(a)(1), which specifically requires EPA to act as a certifying authority on behalf of jurisdictions without the authority to certify,[70] section 401(a)(2) only provides ''states'' with an opportunity to participate as a neighboring jurisdiction.

Although 78 tribes have received TAS for section 401 to date, EPA recognizes that some tribes may not desire or have the resources to apply for the section 401 certification program. However, pre-proposal input suggests that tribes may wish to be notified about, and have the ability to object to and provide information regarding, potential Federal licenses and permits that may impact their waters. Several tribal stakeholders have expressed concern that tribes without TAS are not able to participate in the section 401(a)(2) neighboring jurisdiction process. In light of this input, EPA is proposing to provide tribes with an opportunity to seek TAS authorization for the limited purpose of being a neighboring jurisdiction pursuant to section 401(a)(2).

This approach has been taken in other EPA programs. For example, the Agency's regulations under the Clean Air Act provide opportunities for interested tribes to seek TAS authorization for reasonably severable elements of programs under that statute, so long as such elements are not integrally related to program elements that are not included and are consistent with applicable statutory and regulatory requirements. *See* 40 CFR 49.7(c). Under that authority, EPA has approved tribes for TAS authorization for the procedural comment opportunity provided in connection with issuance of certain permits by upwind permitting authorities, without requiring those tribes to seek authorization for the entire relevant program. *See* 42 U.S.C. 7661d(a)(2).

EPA thinks that the neighboring jurisdiction role under section 401(a)(2) is similar. See discussion in section V.K in this preamble.[71] EPA thinks it is appropriate to allow tribes wishing to protect their water quality interests under section 401(a)(2) to apply for and obtain TAS status to do so independently of whether they also desire to take on the separate responsibility to act pursuant to sections 401(a)(1) and 401(d). Nothing in the language of section 401 precludes this approach.

Additionally, EPA thinks that the neighboring jurisdiction role under section 401(a)(2) is reasonably severable from the statute's other water quality certification activities. Section 401 provides separate and distinct roles for

[69] *See* 2010 Handbook (rescinded); 85 FR 42274.

[70] 33. U.S.C. 1341(a)(1) (''In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator.'')

[71] Under section 401(a)(2), once EPA determines that a federally licensed or permitted discharge may affect the water quality of a neighboring jurisdiction, EPA must notify that neighboring jurisdiction. 33 U.S.C. 1341(a)(2). In turn, the neighboring jurisdiction has 60 days to evaluate the notice and determine whether the discharge will violate its water quality requirements, object to the issuance of the license or permit, and request a public hearing from the Federal licensing or permitting agency. *Id.* Ultimately, the Federal licensing or permitting agency is responsible for evaluating the neighboring jurisdiction's input, in addition to EPA's input and other input received at the public hearing, to determine whether it needs to condition the license or permit to assure that it will comply with the neighboring jurisdiction's water quality requirements. If conditions cannot assure such compliance, then the Federal agency may not issue the license or permit. *Id.*

certifying authorities and neighboring jurisdictions. As noted above, the statutory language expressly provides a role for states and EPA to act as certifying authorities in section 401(a)(1), but only provides a role for states to act as a neighboring jurisdiction in section 401(a)(2). While both sections allow states and tribes with TAS status to inform the Federal licensing or permitting process, there are significant differences. For example, if a certifying authority places conditions on a Federal license or permit through a water quality certification, the Federal agency must incorporate those conditions into the license or permit. 33 U.S.C. 1341(d). However, if a neighboring jurisdiction objects to a Federal license or permit and recommends conditions it would like to see in the Federal license or permit, the Federal agency must consider that objection and recommended conditions as part of its broader analysis, but it is not required to incorporate them verbatim as required by section 401(d). Rather, the Federal agency is only required to impose a neighboring jurisdiction's recommended conditions to the extent they are necessary to assure compliance with the neighboring jurisdiction's applicable water quality requirements. *Id.* at 1341(a)(2).

EPA thinks that authorizing tribes to obtain TAS solely for section 401(a)(2) would allow tribes not interested in issuing their own certifications to have an opportunity to participate as a neighboring jurisdiction where discharges into another jurisdiction's waters may affect their own water quality. The proposed approach is responsive to stakeholder feedback and promotes tribal agency by providing an opportunity for tribes to protect their water quality by participating in the section 401 certification process without requiring the tribe to assume all of the authorities and responsibilities of section 401. EPA is soliciting comment on the proposed provisions, as well as comment on any alternative approaches.

In section V.E in this preamble, EPA discussed the term ''any other appropriate requirement of State law.'' That discussion applies equally to tribal law for those tribes that obtain TAS status, either for section 401 in its entirely or only for section 401(a)(2). There is no reason to treat a tribe's laws differently than a state's laws with respect to their ability to form the legal basis for a certification decision or any conditions the tribe might find necessary to include in a certification. Once it attains TAS status, a tribe stands on equal footing with a state regarding its ability to carry out its functions under sections 401(a)(1), 401(d) and 401(a)(2). Accordingly, a tribe with TAS status under section 401(a)(2) may rely upon any of its water quality-related laws in deciding whether to issue a certification (or conditions) under sections 401(a)(1) and (d) or object to a Federal license or permit under section 401(a)(2).

M. Implementation Considerations

EPA recognizes that both certifying authorities and Federal agencies have existing regulations addressing implementation of section 401. For example, as discussed in section V.C in this preamble, the Agency is aware that some certifying authorities have regulations defining the contents of a request for certification. As a result of this rulemaking effort, certifying authorities may choose to modify their existing regulations if certain proposed provisions are finalized (*e.g.,* they may choose to define the contents of a certification request in regulation instead of relying on EPA's proposed definition). Similarly, EPA is aware that the Corps, FERC, and EPA's NPDES program have separate section 401 implementation regulations addressing their respective licensing or permitting programs.[72] EPA expects that Federal agencies with existing section 401 implementing regulations will evaluate their regulations and other guidance documents to ensure consistency with this regulation. EPA is requesting comment on the types of implementation materials that EPA should develop to assist Federal agencies and certifying authorities to implement any proposed or alternative provisions discussed throughout this preamble.

VI. Economic Analysis

Pursuant to Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review), EPA has prepared an economic analysis (EA) to inform the public of potential effects associated with this proposed rulemaking. This analysis is not required by the CWA.

To support the proposed rulemaking, EPA prepared an EA and other related rule analyses to assess potential impacts of the rule. These analyses seek to evaluate the benefits and costs of the proposed rulemaking and the effects of the rule on vulnerable groups and small entities. The EA presents an overview of practice under the 1971 Rule and 2020 Rule (baselines),[73] a description of the proposed changes, and an assessment of the potential impacts of the proposed rulemaking on project proponents, certifying authorities, and Federal agencies when transitioning from the baselines of regulatory practice to the new proposed requirements. Appendix A in the EA provides a plain-language comparison of the 1971 Rule, 2020 Rule, and proposed rulemaking provisions in a table format. Within the EA, the Agency included discussion of the environmental benefits and process costs with examples relative to the proposed rulemaking provisions. EPA also assessed environmental justice impacts of the proposed rulemaking on vulnerable communities and impacts on small entities. The Agency also prepared an Information Collection Request Supporting Statement which describes the overall burden of the section 401 regulations. *See* section VII.B in this preamble.

Section 401 certification decisions have varying effects on certifying authorities and project proponents. However, the Agency has limited data regarding the number of certification requests submitted and the certification decisions taken on certification requests (*i.e.,* whether the certification requests were granted, granted with conditions, denied, or waived). The Agency does not maintain a national database of certifying authority decisions and therefore did not have data available to perform a fully quantitative economic analysis. Given the absence of data related to section 401 regulations, EPA performed a qualitative analysis of the section 401 certification process under the 1971 Rule, the 2020 Rule, and under the proposed rulemaking.The Agency reviewed information from several sources to characterize section 401 baseline conditions and understand potential impacts of the proposed regulatory changes. Specifically, the Agency investigated state and territory websites and assembled available information concerning section 401 fees and certification decisions. EPA also conducted a focused review of pre-

[72] *See e.g.,* 33 CFR 325.2 (water quality certification on section 404 permits); 18 CFR 4.34 (water quality certification on FERC hydropower licenses); 40 CFR 124.53 through 124.55 (water quality certification on EPA-issued NPDES permits).

[73] On October 21, 2021, the U.S. District Court for the Northern District of California issued an order remanding and vacating EPA's 2020 Rule. The vacatur was nationwide in scope, and the order required a temporary return to the 1971 Rule until EPA finalized a new certification rule. However, the U.S. Supreme Court issued a stay of the vacatur on April 6, 2022, which put the 2020 Rule back in effect pending the Ninth Circuit and potential Supreme Court appeal. Due to the stay of the vacatur pending appeal, EPA considers two baselines in the economic analysis.

proposal input letters [74] to extract any information concerning economic impacts of section 401 and key issues identified during implementation of section 401. Within the EA, EPA describes the various Federal licenses and permits that require section 401 certification and the potential actions that certifying authorities may take pursuant to their section 401 authority. Additionally, the Agency summarized the annual number of licenses and permits that require section 401 certification under different Federal authorities to determine the extent of licensing and permitting actions within the section 401 universe. These types of information are used in the EA to describe implementation practices and trends under the baselines and serve as the basis for assessing impacts of the proposed rulemaking.

In determining the potential effects of the proposed rulemaking, EPA described the impacts of rule revisions in several key areas including pre-filing meetings, contents of certification requests, time period for review, neighboring jurisdictions, and tribal provisions for implementing section 401. The 1971 Rule baseline did not include a pre-filing meeting request requirement. However, because pre-filing meetings allow for early discussion of project details, such meetings would ultimately be expected to reduce burden elsewhere in the section 401 certification process. The 2020 Rule does not provide certifying authorities with the option to waive or shorten the pre-filing meeting request requirement. The Agency anticipates that the proposed pre-filing meeting request provision would provide flexibility for certifying authorities to decide whether to require pre-filing meeting requests and whether to hold pre-filing meetings based on project complexity and other factors. Relative to both the 1971 Rule and 2020 Rule baselines, the Agency expects that the proposed requirement to include a copy of the draft license or permit with all requests for certifications would decrease the number of redundant and unnecessary certification conditions and increase the amount of relevant project-specific information available to the certifying authority promoting a more efficient certification review process. Additionally, relative to the two baselines, the proposed changes concerning the reasonable time for certification review would balance equities between certifying authorities and Federal agencies and provide flexibility for certifying authorities and Federal agencies to determine the optimal length for the reasonable period of time or any extensions, provided they do not exceed one year from receipt. For example, the proposed rulemaking would allow certifying authorities to ensure that the reasonable period of time is informed by the size and complexity of the project, the certifying authority's available resources (*e.g.,* staff size), and public notice and comment requirements. Allowing the certifying authority and Federal agency to negotiate a reasonable period of time at the beginning of the certification process (subject to a 60-day default) is also likely to improve the efficiency of the review process. The proposed rule also provides greater clarity regarding the process to protect neighboring jurisdiction waters (*e.g.,* by specifying the contents of a notification from a Federal agency to EPA), which is also expected to increase its efficiency. This clarity and efficiency is expected when using the 1971 Rule as the baseline, as well as for the 2020 Rule baseline (though potentially to a lesser extent due to some updated provisions in the 2020 Rule). Neither the 1971 Rule nor the 2020 Rule included TAS provisions. Proposed revisions permitting tribes to obtain TAS solely for section 401 and, if desired, to only obtain TAS for the purpose of participating as neighboring jurisdictions under section 401(a)(2), would provide tribes with a greater ability to protect their water resources from the adverse effects of pollution from federally licensed or permitted projects.

In some areas, the proposed rulemaking would revive practices that had been widely implemented for 50 years before the 2020 Rule. Specifically, the proposal would return the scope of a certifying authority's section 401 review as encompassing the ''activity as a whole,'' which is consistent with longstanding Agency and certifying authority practice and allows certifying authorities to protect their waters from the widest range of impacts. The Agency is proposing to put back a certification modification process, allowing certifying authorities and Federal agencies the flexibility to mutually agree on circumstances warranting modification. Provided that certification modification efforts are appropriately coordinated, the modification process under the proposed rulemaking would allow certifying authorities to adapt to changes in environmental and regulatory conditions, and provide needed flexibility to accommodate changed circumstances after issuance of a section 401 certification.

EPA anticipates that the proposed rulemaking will enhance the ability of states and tribes to protect their water resources by clarifying key components of the water quality certification process and improving coordination between Federal agencies, certifying authorities, and project proponents. The Agency is seeking comment on the EA and information collection request, including the information used to inform the Agency's understanding of baseline conditions. Additionally, EPA is requesting comment on any additional data sources that can be used to characterize the baseline for section 401 implementation and serve as the basis for understanding the potential impacts of any of these proposed regulatory changes.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action. The Agency prepared an economic analysis of the potential benefits and costs associated with this action. This analysis, the Economic Analysis for the Proposed Rule, is available in the docket for this action and is briefly summarized in section VI in this preamble.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rulemaking have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2603.06. A copy of the ICR is included in the docket for this rule, and it is briefly summarized here.

The information collected under section 401 is used by certifying authorities and EPA to evaluate potential water quality impacts from federally licensed or permitted projects. When states or tribes with TAS act as the certifying authority, the primary collection of this information is performed by the Federal agencies issuing the licenses or permits or the states and tribes acting as certifying authorities. When EPA acts as the

[74] Docket ID No. EPA–HQ–OW–2021–0302.

certifying authority or evaluates potential neighboring jurisdiction impacts, the information is collected by EPA. Information collected directly by EPA under section 401 in support of the section 402 NPDES program is already captured under existing ICR No. 0229.255 (OMB Control No. 2040–0004). The information collected under section 518(e) is used by EPA to determine whether a tribe is eligible for TAS for section 401 or section 401(a)(2). Information collected directly by EPA under section 518(e) in support of the process for tribes to obtain TAS for CWA section 303(c) and section 401 simultaneously is already captured under existing ICR No. 0988.14 (OMB Control No. 2040–0049).

The proposed revisions clarify the nature of the information project proponents must include in a request for section 401 certification. They also contain a pre-filing meeting request requirement for project proponents which may be waived or shortened by a certifying authority. The proposed revisions also provide tribes with the ability to obtain TAS solely for either section 401 or section 401(a)(2). Total annual burden for respondents (project proponents and certifying authorities and tribes applying for TAS) are anticipated to be 861,274 hours with the associated annual labor costs being approximately $47 million. EPA expects that these proposed revisions will provide additional transparency in the certification modification and section 401(a)(2) contexts. EPA expects these proposed revisions to provide greater clarity regarding section 401 requirements, to reduce the overall preparation time spent by a project proponent on certification requests, and to reduce the review time for certifying authorities. EPA solicits comment on whether there are ways it can increase clarity, reduce the information collection burden, or improve the quality or utility of the information collected, or the information collection process itself, in furtherance of goals and requirements of section 401.

In the interest of transparency, EPA is providing the following summary of the relevant portions of the burden assessment associated with EPA's existing certification regulations. EPA does not expect any measurable change in information collection burden associated with the proposed rulemaking changes.

Respondents/affected entities: Project proponents, state and tribal reviewers (certifying authorities), tribes applying for TAS.

Respondent's obligation to respond: Required to obtain section 401 water quality certification; voluntary for tribes to apply for TAS.

Estimated number of respondents: 154,006 responses from 72,125 respondents annually.

Frequency of response: Variable (one per Federal license or permit application, or only once) depending on type of information collected.

Total estimated burden: 861,274 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $47 million (per year), includes $0 annualized capital or operation & maintenance costs.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *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. OMB must receive comments no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

C. Regulatory Flexibility Act (RFA)

I certify that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses applying for Federal licenses or permits subject to section 401 certification, which includes construction, manufacturing, mining, and utility businesses. Section 401 requires project proponents to obtain a water quality certification from the certifying authority where the potential discharge originates or will originate before it may obtain such Federal license or permit. Small entities are not subject to economic impacts from the proposed rule's requirements on certifying authorities, Federal agencies, or neighboring jurisdictions because small entities do not act in those roles under section 401.

EPA is not able to quantify the impacts of the proposed rulemaking on small entities due to several data limitations and uncertainties, which are described within the Economic Analysis for the Proposed Rule, available in the docket for this rulemaking. However, EPA is including a qualitative assessment of the potential impacts of the proposed rulemaking on project proponents that are small entities in the Economic Analysis. Based on the qualitative analysis, the Agency has determined that some small entities may experience some impact from the proposed rulemaking but that the impact would not be significant. *See* the Economic Analysis for details of the qualitative analysis.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates enforceable duties for the private sector, the cost does not exceed $100 million or more. This action does not create enforceable duties for state and tribal governments. See the Economic Analysis in the docket for further discussion on UMRA.

E. Executive Order 13132: Federalism

Under the technical requirements of Executive Order 13132 (64 FR 43255, August 10, 1999), EPA has determined that this proposed rulemaking does not have federalism implications but expects that this proposed rulemaking may be of significant interest to state and local governments.

EPA is proposing updates to its CWA section 401 regulation to provide greater clarity and flexibility for certifying authorities in relation to acting on pre-filing meeting requests, contents of requests for certification, and acting within the reasonable period of time. EPA is also proposing to clarify the scope of Federal agency review of certification decisions; however, nothing in EPA's proposed rulemaking would preempt state law. These proposed regulatory clarifications and revisions will reinforce the authority granted to states by CWA section 401 to protect their water quality, which had been exercised by the states prior to implementation of the 2020 Rule.

Prior to proposing this rule, EPA solicited recommendations and conducted pre-proposal outreach, such as virtual listening sessions, where many state and local governments, intergovernmental associations, and other associations representing state and

local governments participated. Specifically, EPA hosted webinar-based listening sessions for pre-proposal input on June 14, June 15, June 23, and June 24, 2021, with over 400 participants from most states and a few territories. Furthermore, EPA accommodated requests for listening sessions with representatives from the Association of Clean Water Administrators, the Association of State Wetland Managers, the Environmental Council of the States, Western States Water Council, Indiana Department of Environmental Management, Maryland Department of the Environment, New Mexico Environmental Department, New York Department of Environmental Conservation, Oregon Department of Environmental Quality, Virginia Department of Environmental Quality, and Washington Department of Ecology. All pre-proposal input letters and summaries of the webinar-based listening sessions are available in Docket ID No. EPA–HQ–OW–2021–0302. These webinars, meetings, and input letters provided a wide and diverse range of interests, positions, and recommendations to the Agency. The pre-proposal feedback from certifying authorities covered eight of the issues the EPA identified in the **Federal Register** document. *See* 86 FR 29543–44. Generally, participants advocated for states to have increased authority and flexibility to determine the needs and requirements for certification requests. In addition, states asked EPA to clarify definitions and conveyed support for interim guidance and immediate relief as they continued to implement the 2020 Rule.

After publishing this proposed rulemaking, EPA will conduct additional outreach and engagement with state and local government officials, or their representative national organizations, prior to finalizing a rule. All comment letters and recommendations received by EPA during the comment period from state and local governments will be included in the proposed rulemaking docket (Docket ID No. EPA–HQ–OW–2022–0128).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action may have implications for tribal governments. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action may change how tribes with TAS for section 401 administer the section 401 program, but it will not have an administrative impact on tribes on whose behalf EPA issues certifications. As discussed in the preamble, EPA expects this proposal to expand and further clarify the opportunities for tribal participation in the CWA section 401 water quality certification process.

EPA consulted with tribal officials under the *EPA Policy on Consultation and Coordination With Indian Tribes* early in the process of developing this proposed rulemaking to allow them to have meaningful and timely input into its development.

The Agency initiated a tribal consultation and coordination process before proposing this rule by sending a ''Notification of Consultation and Coordination'' letter, dated June 7, 2021, to all 574 of the tribes federally recognized at that time (*see* Docket ID No. EPA–HQ–OW–2021–0302). The letter invited tribal leaders and designated consultation representatives to participate in the tribal consultation and coordination process for this rulemaking. In addition to two national tribal webinars held on June 29 and July 7, 2021, the Agency convened other listening sessions, that tribal members and representatives attended, for certifying authorities and the public. EPA continued outreach and engagement with tribes and sought other opportunities to provide information and hear feedback from tribes at national and regional tribal meetings during and after the end of the consultation period. The Agency did not receive any consultation requests. All tribal and tribal organization letters and webinar feedback are included in the pre-proposal docket (Docket ID No. EPA–HQ–OW–2021–0302), and a summary of the tribal consultation and coordination effort may be found in the docket for this action (Docket ID No. EPA–HQ–OW–2022–0128).

Many tribal feedback letters or meeting participants expressed an interest in receiving additional information and in continued engagement with the Agency during development of the proposed rulemaking; however, most of these tribal representatives highlighted other ongoing rulemakings that also required their engagement. Common themes expressed in the tribal feedback letters included the need for applicants to submit complete certification requests, expanding the scope of certifications, cooperative federalism, concerns about a Federal agency's unilateral ability to determine the reasonable period of time, and concerns about Federal agencies waiving certifying authority decisions. Feedback was relatively consistent across these stakeholders regardless of whether the feedback was from tribes having TAS or not.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Economic Analysis for the Proposed Rule, which can be found in the docket for this action and is briefly summarized in section VI in this preamble.

The Agency recognizes that the burdens of environmental pollution disproportionately fall on population groups of concern (*e.g.,* minority, low-income, and indigenous populations as specified in Executive Order 12898), and EPA is responsive to environmental justice concerns through multiple provisions in this proposal. The proposed pre-filing meeting request requirement provides a mechanism to ensure certifying authorities can request and receive information needed to protect their water resources and population groups of concern during early engagement. Additionally, the proposal to include a copy of the draft permit or license in a ''request for certification'' empowers certifying

authorities with more details upfront about the project to make a well-informed decision that may affect population groups of concern, promoting environmental justice and transparency in the certification process. This also enables certifying authorities to share a greater level of detail with the public (including population groups of concern that may be impacted by a proposed project), so that participants in the public notice and comment process can provide better informed input.[75] Under the proposed collaborative approach for determining the reasonable period of time, certifying authorities can take the needs of population groups of concern into account when determining the amount of time they need to review and evaluate the potential impacts of a proposed project on the communities' water resources (*e.g.,* a certifying authority may suggest a longer reasonable period of time to facilitate outreach to population groups of concern or to conduct studies on a proposed project's impact on these communities). Additionally, the ''activity as a whole'' approach for scope of review has the potential to benefit population groups of concern by ensuring that the certifying authority can broadly review the potential water quality impacts on those communities. The proposed TAS provisions for section 401 as a whole or for section 401(a)(2) give tribes additional options to obtain TAS, as well as more opportunities to provide input and voice any water quality concerns during the certification process. Lastly, when EPA is acting as the certifying authority, the Agency is proposing to update the public notice provision to facilitate participation by the broadest number of potentially interested stakeholders, including population groups of concern. These proposed approaches and their responsiveness to environmental justice concerns is further discussed within the environmental justice section of the Economic Analysis.

List of Subjects

40 CFR Part 121

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Water pollution control.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Michael S. Regan,
Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR parts 121, 122, and 124 as follows:

■ 1. Revise part 121 to read as follows:

PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

Sec.

Subpart A—General

121.1 Definitions.
121.2 When certification is required.
121.3 Scope of certification.
121.4 Pre-filing meeting requests.
121.5 Request for certification.
121.6 Reasonable period of time.
121.7 Certification decisions.
121.8 Failure or refusal to act.
121.9 Federal agency review.
121.10 Modifications.
121.11 Requirements for Indian Tribes to administer a water quality certification program.

Subpart B—Neighboring Jurisdictions

121.12 Notification to the Regional Administrator.
121.13 Determination of effects on neighboring jurisdictions.
121.14 Neighboring jurisdiction objection and request for a public hearing.
121.15 Public hearing and Federal agency evaluation of neighboring jurisdiction objection.

Subpart C—Certification by the Administrator

121.16 When the Administrator certifies.
121.17 Public notice and hearing.

Subpart D—Review and Advice

121.18 Review and advice.

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—General

§ 121.1 Definitions.

As used in this part, the following terms shall have the meanings indicated:

(a) *Activity as a whole* means any aspect of the project activity with the potential to affect water quality.

(b) *Administrator* means the Administrator, Environmental Protection Agency (EPA).

(c) *Application* means an application for a license or permit submitted to a Federal agency, or if available, the draft license or permit.

(d) *Certifying authority* means the entity responsible for certifying compliance with applicable water quality requirements in accordance with Clean Water Act section 401.

(e) *Federal agency* means any agency of the Federal Government to which application is made for a license or permit that is subject to Clean Water Act section 401.

(f) *Federal Indian Reservation, Indian reservation,* or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(g) *Indian Tribe* or *Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian Reservation.

(h) *License* or *permit* means any license or permit issued or granted by an agency of the Federal Government to conduct any activity which may result in any discharge into waters of the United States.

(i) *Neighboring jurisdiction* means any state, or tribe with treatment in a similar manner as a state for Clean Water Act section 401 in its entirety or only for Clean Water Act section 401(a)(2), other than the jurisdiction in which the discharge originates or will originate.

(j) *Project proponent* means the applicant for a license or permit or the entity seeking certification.

(k) *Receipt* means the date that a request for certification, as defined by the certifying authority, is documented as received by a certifying authority in accordance with the certifying authority's applicable submission procedures.

(l) *Regional Administrator* means the Regional designee appointed by the Administrator, Environmental Protection Agency.

(m) *Water quality requirements* means any limitation, standard, or other requirement under sections 301, 302, 303, 306 and 307 of the Clean Water Act, any Federal and state or tribal laws or regulations implementing those sections, and any other water quality-related requirement of state or tribal law.

§ 121.2 When certification is required.

Certification or waiver is required for any license or permit that authorizes an activity which may result in a discharge from a point source into a water of the United States.

[75] Under section 401(a)(1), a certifying authority is required to provide public notice on a request for certification.

§ 121.3 Scope of certification.

When a certifying authority reviews a request for certification, it shall evaluate whether the activity as a whole will comply with all applicable water quality requirements.

§ 121.4 Pre-filing meeting requests.

The project proponent shall request a pre-filing meeting from a certifying authority at least 30 days prior to submitting a request for certification in accordance with the certifying authority's applicable submission procedures, unless the certifying authority waives or shortens the requirement for a pre-filing meeting request.

§ 121.5 Request for certification.

(a) A request for certification shall be in writing, signed, and dated and shall include a copy of the draft license or permit (unless legally precluded from obtaining a copy of the draft license or permit) and any existing and readily available data or information related to potential water quality impacts from the proposed project.

(b) Where a project proponent is seeking certification from the Regional Administrator, a request for certification shall also include the additional contents identified in paragraph (c) of this section. Where a project proponent is seeking certification from a certifying authority other than the Regional Administrator, and that certifying authority has not identified in regulation additional contents of a request for certification, the project proponent shall submit a request for certification as defined in paragraph (c) of this section.

(c) A request for certification submitted to the Regional Administrator shall include the following, if not already included in the draft license or permit:

(1) The name and address of the project proponent;

(2) The project proponent's contact information;

(3) Identification of the applicable Federal license or permit, including Federal license or permit type, project name, project identification number, and a point of contact for the Federal agency;

(4) Where applicable, a list of all other Federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization; and

(5) Documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission requirements, unless a pre-filing meeting request has been waived.

(d) A certifying authority shall send written confirmation of the date of receipt of the request for certification to the project proponent and Federal agency.

§ 121.6 Reasonable period of time.

(a) The reasonable period of time shall begin upon receipt of a request for certification.

(b) The Federal agency and the certifying authority may, within 30 days of receipt of a request for certification, jointly agree in writing to a reasonable period of time for the certifying authority to act on the request for certification, provided the reasonable period of time does not exceed one year from receipt.

(c) If the Federal agency and the certifying authority do not agree on the length of a reasonable period of time within 30 days of receipt of a request for certification, the reasonable period of time shall be 60 days. If a longer period of time is necessary to accommodate the certifying authority's public notice requirements or force majeure events (including, but not limited to, government closure or natural disasters), upon notification by the certifying authority prior to the end of the reasonable period of time, the reasonable period of time shall be extended by the period of time necessitated by public notice requirements or the force majeure event. In its notification, the certifying authority shall provide the Federal agency with a justification for such extension in writing. Such an extension may not exceed one year from receipt of the certification request.

(d) The Federal agency and certifying authority, after consulting with the project proponent, may agree to extend the reasonable period of time in writing for any other reason, provided the reasonable period of time as extended does not exceed one year from receipt of the request for certification.

§ 121.7 Certification decisions.

(a) A certifying authority may act on a request for certification in one of four ways: grant certification, grant certification with conditions, deny certification, or expressly waive certification.

(b) A certifying authority shall act on a request for certification within the scope of certification, as defined at § 121.3, and within the reasonable period of time, as determined pursuant to § 121.6.

(c) A grant of certification by a certifying authority shall be in writing and include the following:

(1) Name and address of the project proponent and identification of the applicable Federal license or permit; and

(2) A statement that the activity as a whole will comply with water quality requirements.

(d) A grant of certification with conditions by a certifying authority shall be in writing and include the following:

(1) Name and address of the project proponent and identification of the applicable Federal license or permit;

(2) Any conditions necessary to assure that the activity as a whole will comply with water quality requirements; and

(3) A statement explaining why each of the included conditions is necessary to assure that the activity as a whole will comply with water quality requirements.

(e) A denial of certification by a certifying authority shall be in writing and include the following:

(1) Name and address of the project proponent and identification of the applicable Federal license or permit; and

(2) A statement explaining why the certifying authority cannot certify that the activity as a whole will comply with water quality requirements.

(f) An express waiver by a certifying authority shall be in writing and include the following:

(1) Name and address of the project proponent and identification of the applicable Federal license or permit; and

(2) A statement stating that the certifying authority expressly waives its authority to act on a request for certification.

(g) If the certifying authority determines that no water quality requirements are applicable to the activity as a whole, the certifying authority shall grant certification.

§ 121.8 Failure or refusal to act.

The certification requirement shall be waived if a certifying authority fails or refuses to act on a request for certification in accordance with § 121.7(a) within the reasonable period of time, as defined at § 121.6.

§ 121.9 Federal agency review.

(a) To the extent a Federal agency reviews a certification decision for compliance with Clean Water Act section 401, its review is limited to evaluating whether:

(1) The certification decision indicates whether it is a grant, grant

with conditions, denial, or express waiver;

(2) The proper certifying authority issued the certification decision;

(3) The certifying authority provided public notice on the request for certification; and

(4) The certification decision was issued within the reasonable period of time, as defined at § 121.6.

(b) If a Federal agency determines that a certification decision does not meet the elements identified in paragraph (a)(1) or (3) of this section, the Federal agency shall notify the certifying authority and provide the certifying authority with an opportunity to ensure that its certification decision meets those elements. If necessary, the reasonable period of time shall be extended to provide the certifying authority with such an opportunity, but in no case shall the reasonable period of time exceed one year from the receipt of the certification request.

(c) If a Federal agency determines that a certification decision does not meet the element identified in paragraph (a)(4) of this section, the Federal agency shall notify the certifying authority and project proponent in writing that the certification requirement has been waived in accordance with § 121.8. Such notice shall satisfy the project proponent's obligations under Clean Water Act section 401.

§ 121.10 Modifications.

(a) The certifying authority may not:

(1) Revoke or modify a denial of certification;

(2) Revoke or modify a waiver of certification;

(3) Revoke a grant of certification (with or without conditions); or

(4) Modify a grant of certification (with or without conditions) into a denial or waiver of certification.

(b) Provided that the Federal agency and the certifying authority agree in writing that the certifying authority may modify a grant of certification (with or without conditions), the certifying authority may modify the agreed upon portions of the certification.

§ 121.11 Requirements for Indian Tribes to administer a water quality certification program.

(a) The Regional Administrator may accept and approve a tribal application for purposes of administering a water quality certification program if the Tribe meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior and meets the definitions in § 121.1(f) and (g);

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers;

(3) The water quality certification program to be administered by the Indian Tribe pertains to the management and protection of water resources that are within the borders of the Indian reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation; and

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality certification program in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(b) Requests by an Indian Tribe for administration of a water quality certification program should be submitted to the appropriate EPA Regional Administrator. The application shall include the following information, provided that where the Tribe has previously qualified for eligibility or ''treatment as a state'' under another EPA-administered program, the Tribe need only provide the required information that has not been submitted in a previous application:

(1) A statement that the Tribe is recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(i) Describe the form of tribal government;

(ii) Describe the types of governmental functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and

(iii) Identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Tribe's authority to regulate water quality. The statement should include:

(i) A map or legal description of the area over which the Tribe asserts authority to regulate surface water quality; and

(ii) A statement by the Tribe's legal counsel or equivalent official that describes the basis for the Tribe's assertion of authority and may include copies of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the Tribe's assertion of authority.

(4) A narrative statement describing the capability of the Indian Tribe to administer an effective water quality certification program. The narrative statement should include:

(i) A description of the Indian Tribe's previous management experience that may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the tribal governing body and copies of related tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and implementing a water quality certification program; and

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality certification program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) Additional documentation required by the Regional Administrator which, in the judgment of the Regional Administrator, is necessary to support a tribal application.

(c) The procedure for processing a Tribe's application is as follows:

(1) The Regional Administrator shall process an application of an Indian Tribe submitted pursuant to paragraph (b) of this section in a timely manner. The Regional Administrator shall promptly notify the Indian Tribe of receipt of the application.

(2) Except as provided in paragraph (c)(4) of this section, within 30 days after receipt of the Tribe's application, the Regional Administrator shall provide appropriate notice. The notice shall:

(i) Include information on the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters;

(ii) Be provided to all appropriate governmental entities; and

(iii) Provide 30 days for comments to be submitted on the tribal application. Comments shall be limited to the Tribe's assertion of authority.

(3) If a Tribe's asserted authority is subject to a competing or conflicting claim, the Regional Administrator, after due consideration, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of paragraph (a)(3) of this section.

(4) Where, after [EFFECTIVE DATE OF FINAL RULE], EPA has determined that a Tribe qualifies for treatment in a similar manner as a state for the Clean Water Act section 303(c) Water Quality Standards Program, Clean Water Act section 303(d) Impaired Water Listing and Total Maximum Daily Loads Program, Clean Water Act section 402 National Pollutant Discharge Elimination System Program, or Clean Water Act section 404 Dredge and Fill Permit Program, and has provided notice and an opportunity to comment on the Tribe's assertion of authority to appropriate governmental entities as part of its review of the Tribe's prior application, no further notice to governmental entities, as described in paragraph (c)(2) of this section, shall be provided with regard to the same Tribe's application for the water quality certification program, unless the application presents to the EPA Regional Administrator different jurisdictional issues or significant new factual or legal information relevant to jurisdiction.

(5) Where the Regional Administrator determines that a Tribe meets the requirements of this section, they shall promptly provide written notification to the Indian Tribe that the Tribe is authorized to administer the water quality certification program.

(d) An Indian Tribe may submit a tribal application for purposes of administering only the Clean Water Act section 401(a)(2) portion of a water quality certification program.

Subpart B—Neighboring Jurisdictions

§ 121.12 Notification to the Regional Administrator.

(a) Within five days of the date that it has received both the application and either a certification or waiver for a Federal license or permit, the Federal agency shall provide written notification to the Regional Administrator.

(1) The notification shall include a copy of the certification or waiver and the application for the Federal license or permit.

(2) The notification shall also contain a general description of the proposed project, including but not limited to, permit or license identifier, project location (*e.g.,* latitude and longitude), a project summary including the nature of any discharge and size or scope of activity, and whether the Federal agency is aware of any neighboring jurisdiction providing comment about the project. If the Federal agency is aware that a neighboring jurisdiction provided comment about the project, it shall include a copy of those comments in the notification.

(b) If the Regional Administrator determines there is a need for supplemental information to make a determination about potential neighboring jurisdiction effects pursuant to Clean Water Act section 401(a)(2), the Regional Administrator may make a written request to the Federal agency that such information be provided in a timely manner for EPA's determination, and the Federal agency shall obtain that information from the project proponent and forward the additional information to the Administrator within such timeframe.

(c) The Regional Administrator may enter into an agreement with a Federal agency regarding the manner of this notification process and the provision of supplemental information.

§ 121.13 Determination of effects on neighboring jurisdictions.

(a) Within 30 days after the Regional Administrator receives notice in accordance with § 121.12(a), the Regional Administrator shall determine whether a discharge from the certified or waived project may affect water quality in a neighboring jurisdiction.

(b) If the Regional Administrator determines that the discharge from the project may affect water quality in a neighboring jurisdiction, within 30 days after receiving notice in accordance with § 121.12(a), the Regional Administrator shall notify the neighboring jurisdiction, the certifying authority, the Federal agency, and the project proponent in accordance with paragraph (c) of this section.

(c) Notification from the Regional Administrator shall be in writing and shall include:

(1) A statement that the Regional Administrator has determined that a discharge from the project may affect the neighboring jurisdiction's water quality;

(2) A copy of the license or permit application and related certification or waiver; and

(3) A statement that the neighboring jurisdiction has 60 days to notify the Regional Administrator, the Federal agency, and the certifying authority, in writing, whether it has determined that the discharge will violate any of its water quality requirements, to object to the issuance of the Federal license or permit, and to request a public hearing from the Federal agency.

(d) A Federal license or permit may not be issued pending the conclusion of the process described in §§ 121.14 and 121.15.

§ 121.14 Neighboring jurisdiction objection and request for a public hearing.

(a) If the neighboring jurisdiction determines that a discharge will violate any of its water quality requirements, within 60 days after receiving notice in accordance with § 121.13(c), the neighboring jurisdiction shall notify the Regional Administrator, the Federal agency, and the certifying authority in accordance with paragraph (b) of this section.

(b) Notification from the neighboring jurisdiction shall be in writing and shall include:

(1) A statement that the neighboring jurisdiction objects to the issuance of the Federal license or permit;

(2) An explanation of the reasons supporting the neighboring jurisdiction's determination that the discharge will violate its water quality requirements, including but not limited to, an identification of those water quality requirements that will be violated; and

(3) A request for a public hearing from the Federal agency on its objection.

§ 121.15 Public hearing and Federal agency evaluation of neighboring jurisdiction objection.

(a) Upon a request for hearing from a neighboring jurisdiction in accordance with § 121.14(b), the Federal agency shall hold a public hearing on the neighboring jurisdiction's objection to the license or permit.

(b) The Federal agency shall provide public notice at least 30 days in advance of the hearing.

(c) At the hearing, the Regional Administrator shall submit to the Federal agency its evaluation and recommendation(s) concerning the objection.

(d) The Federal agency shall consider recommendations from the neighboring jurisdiction and the Regional

Administrator, and any additional evidence presented to the Federal agency at the hearing, and determine whether additional license or permit conditions may be necessary to ensure that any discharge from the project will comply with the neighboring jurisdiction's water quality requirements. If such conditions may be necessary, the Federal agency shall include them in the license or permit.

(e) If additional license or permit conditions cannot ensure that the discharge from the project will comply with the neighboring jurisdiction's water quality requirements, the Federal agency shall not issue the license or permit.

Subpart C—Certification by the Administrator

§ 121.16 When the Administrator certifies.

(a) Certification or waiver by the Administrator is required where no state, tribe, or interstate agency has authority to give such a certification.

(b) When acting pursuant to this section, the Administrator shall comply with the requirements of Clean Water Act section 401 and this part.

§ 121.17 Public notice and hearing.

(a) Within 20 days of receipt of a request for certification, the Administrator shall provide public notice of receipt of a request for certification. Following such public notice, the Administrator shall provide an opportunity for public comment.

(b) If the Administrator determines that a public hearing on a request for certification is appropriate or necessary, the Administrator shall schedule such hearing at an appropriate time and place and, to the extent practicable, give all interested and potentially affected parties the opportunity to present evidence or testimony in person or by other means.

Subpart D—Review and Advice

§ 121.18 Review and advice.

Upon the request of any Federal agency, certifying authority, or project proponent, the Administrator shall provide any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any Federal agency, certifying authority, or project proponent, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 2. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 3. Section 122.4 is amended by revising paragraph (b) to read as follows:

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of the CWA and that certification has not been obtained or waived;

* * * * *

■ 4. Section 122.44 is amended by revising paragraph (d)(3) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) * * *

(3) Conform to the conditions in a State certification under section 401 of the CWA when EPA is the permitting authority;

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

■ 5. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

■ 6. Section 124.53 is amended by:

■ a. Removing paragraphs (b), (c), and (e);

■ b. Redesignating paragraph (d) as paragraph (b); and

■ c. Revising newly redesignated paragraph (b).

The revision reads as follows:

§ 124.53 State certification.

* * * * *

(b) State certification shall be granted or denied within the reasonable period of time as required under CWA section 401(a)(1). The State shall send a notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

■ 7. Section 124.54 is amended by revising paragraphs (a) and (b) to read as follows:

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.

(a) When an application for a permit incorporating a variance request under CWA section 301(h) is submitted to a State, the appropriate State official shall either:

(1) Deny the request for the CWA section 301(h) variance (and so notify the applicant and EPA) and, if the State is an approved NPDES State and the permit is due for reissuance, process the permit application under normal procedures; or

(2) Forward a copy of the certification required under CWA section 401(a)(1) to the Regional Administrator.

(b) When EPA issues a tentative decision on the request for a variance under CWA section 301(h), and no certification has been received under paragraph (a) of this section, the Regional Administrator shall forward the tentative decision to the State. If the State fails to deny or grant certification and concurrence under paragraph (a) of this section within the reasonable period of time provided in CWA section 401(a)(1), certification shall be waived and the State shall be deemed to have concurred in the issuance of a CWA section 301(h) variance.

* * * * *

■ 8. Section 124.55 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e) respectively; and

■ d. Revising newly redesignated paragraphs (b) and (c).

The revisions read as follows:

§ 124.55 Effect of State certification.

(a) When certification is required under CWA section 401(a)(1), no final permit shall be issued:

(1) If certification is denied; or

(2) Unless the final permit incorporates the conditions specified in the certification.

(b) A State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition.

(c) A condition in a draft permit may be changed during agency review in any manner consistent with a corresponding certification. No such changes shall require EPA to submit the permit to the State for recertification.

* * * * *

[FR Doc. 2022–12209 Filed 6–8–22; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 87, No. 111

Thursday, June 9, 2022

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32965–33406 1
33407–33582 2
33583–34066 3
34067–34572 6
34573–34762 7
34863–35066 8
35067–35382 9

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9705 (amended by 10403)...33407, (amended by 10406), 33591
9980 (amended by 10403)...33407, (amended by 10406), 33591
10403 33407
10404 33413
10405 33583
10406 33591
10407 33601
10408 33603
10409 33605
10410 33607
10411 33609
10412 33611
10413 33613
10414 35067

Administrative Orders:
Memorandums:
Memorandum of June 1, 2022 35081
Memorandum of June 3, 2022 34763
Presidential Determinations:
No. 2022-15 of June 6, 2022 35071
No. 2022-16 of June 6, 2022 35073
No. 2022-17 of June 6, 2022 35075
No. 2022-18 of June 6, 2022 35077
No. 2022-19 of June 6, 2022 35079

5 CFR

Proposed Rules:
875 33653

7 CFR

Proposed Rules:
51 33064

8 CFR

214 34067
274 34067

9 CFR

Proposed Rules:
201 ..... 34814, 34980

10 CFR

429 33316
430 33316
431 ..... 33316, 34067

Proposed Rules:
429 ..... 34934, 35286
430 ..... 34934, 35286
431 34220

12 CFR

210 34350
328 33415
1240 ..... 33423, 33615
1290 32965
1291 32965

Proposed Rules:
25 33884
228 33884
345 33884

13 CFR

121 34094

14 CFR

39 ..... 32969, 32973, 32975, 32978, 33435, 33621, 33623, 33627, 33630, 33632, 34120, 34125, 34129, 34765, 34767, 34770, 34772
71 ..... 32980, 32981, 32982, 34573, 35083

Proposed Rules:
39 ..... 33071, 33076, 33451, 33454, 33457, 33658, 34221, 34587, 34591, 35118, 35122, 35125, 35128
71 ..... 33080, 33082, 33083, 33085, 33660, 34595, 34597, 35133

15 CFR

734 34131
740 ..... 32983, 34131
743 32983
744 ..... 32987, 34131, 34154
746 34131
748 32983
766 34131

16 CFR

1225 32988

Proposed Rules:
310 ..... 33662, 33677

19 CFR

12 34775

20 CFR

655 34067

21 CFR

870 ..... 32988, 34777
876 34164
1141 32990
1308 ..... 32991, 32996, 34166

25 CFR

Proposed Rules:
571 33091

26 CFR

Proposed Rules:
1 34223

27 CFR

9 ....33634, 33638, 33642, 33646

Proposed Rules:
25 34819

29 CFR

1910 32999

31 CFR

515 35088
587 ....32999, 34169

Proposed Rules:
1010 34224

32 CFR

199 ....33001, 34779

33 CFR

100 ....33015, 34170, 34574, 34779
165 ....33018, 33019, 33020, 33649, 34171, 34173, 34574, 34576, 34781, 34784, 34786, 34788, 35092, 35094
187 34175

Proposed Rules:
117 ....33460, 34598, 34601
165 ....33695, 34603, 34605, 34607, 34834

34 CFR

Ch. II 34790

36 CFR

222 35097

Proposed Rules:
242 34228

37 CFR

Proposed Rules:
385 33093

38 CFR

17 33021
79 33025

39 CFR

111 ....33047, 34197

40 CFR

52 ....33438, 33650, 34577, 34579, 34795, 34797, 35104
81 ....34795, 34797, 35104
180 ....34203, 34206
271 34579

Proposed Rules:
52 ....33095, 33461, 33464, 33697, 33699, 34609, 34612
63 34614
121 35318
122 35318
124 35318

47 CFR

1 34209
10 34212
11 34213
25 33441
73 ....33441, 34799
76 33441

Proposed Rules:
15 33109
27 33466
73 34624

49 CFR

571 34800
575 34800

50 CFR

300 ....34580, 34584
622 34811
635 ....33049, 33056
648 35112
660 33442
679 34215

Proposed Rules:
17 ....34228, 34625
32 35136
100 34228
218 33113
648 34629

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

S. 1760/P.L. 117–131
To designate the community-based outpatient clinic of the Department of Veterans Affairs planned to be built in Oahu, Hawaii, as the ''Daniel Kahikina Akaka Department of Veterans Affairs Community-Based Outpatient Clinic''. (June 7, 2022; 136 Stat. 1231)

S. 1872/P.L. 117–132
United States Army Rangers Veterans of World War II Congressional Gold Medal Act (June 7, 2022; 136 Stat. 1232)

S. 2102/P.L. 117–133
Dr. Kate Hendricks Thomas Supporting Expanded Review for Veterans In Combat Environments Act (June 7, 2022; 136 Stat. 1238)

S. 2514/P.L. 117–134
To rename the Provo Veterans Center in Orem, Utah, as the ''Col. Gail S. Halvorsen 'Candy Bomber' Veterans Center''. (June 7, 2022; 136 Stat. 1241)

S. 2533/P.L. 117–135
Making Advances in Mammography and Medical Options for Veterans Act (June 7, 2022; 136 Stat. 1244)

S. 2687/P.L. 117–136
Strengthening Oversight for Veterans Act of 2021 (June 7, 2022; 136 Stat. 1251)

S. 3527/P.L. 117–137
To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to transfer the name of property of the Department of Veterans Affairs designated by law to other property of the Department. (June 7, 2022; 136 Stat. 1254)

S. 4089/P.L. 117–138
Veterans Rapid Retraining Assistance Program Restoration and Recovery Act of 2022 (June 7, 2022; 136 Stat. 1256)

S. 4119/P.L. 117–139
RECA Extension Act of 2022 (June 7, 2022; 136 Stat. 1258)

Last List June 8, 2022

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.