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Contents

Federal Register

Vol. 87, No. 161

Monday, August 22, 2022

Separate Parts In This Issue

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.

7 CFR

Proposed Rules:

981 51270

10 CFR

430 51492

14 CFR

71 (9 documents) 51237, 51238, 51239, 51241, 51242, 51243, 51245, 51246, 51248

Proposed Rules:

39 51271
259 51550
260 51550
399 51550

16 CFR

Proposed Rules:

Ch. I 51273

27 CFR

478 51249
479 51249

29 CFR

Proposed Rules:

2570 51299

33 CFR

100 (2 documents) 51250
165 (3 documents) 51251, 51253, 51257

40 CFR

52 (3 documents) 51259, 51262, 51265
81 (2 documents) 51262, 51265

Proposed Rules:

52 51300

42 CFR

Proposed Rules:

433 51303
437 51303
457 51303

47 CFR

64 51267
76 51267

Rules and Regulations

Federal Register
Vol. 87, No. 161
Monday, August 22, 2022

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0819; Airspace Docket No. 19–AAL–37]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–368; King Salmon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–368 in the vicinity of King Salmon, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, November 3, 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 *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 expands the availability of RNAV route structure in Alaska and improves the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0819 in the **Federal Register** (86 FR 58608; October 22, 2021), establishing RNAV route T–368 in the vicinity of King Salmon, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–368 in the vicinity of King Salmon, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The route is described below.

T–368: T–368 is established between the King Salmon, AK (AKN), VHF Omnidirectional Range/Tactical Air Navigational System (VORTAC) and the Kodiak, AK (ODK), VOR/Distance Measuring Equipment (DME) navigational aids as an alternative to VOR Federal airway V–506 and Colored Federal airway B–27.

The full route description of the new route is in the amendment to part 71 as set forth below.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–368 in the vicinity of King Salmon, AK, 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), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. 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. Accordingly, 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 FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–368 King Salmon, AK (AKN) to Kodiak, AK (ODK) [New]

King Salmon, AK (AKN)	VORTAC	(Lat. 58°43′28.97″ N, long. 156°45′08.45″ W)
KOKOZ, AK	FIX	(Lat. 58°31′05.99″ N, long. 155°42′32.17″ W)
WORRI, AK	FIX	(Lat. 58°45′58.43″ N, long. 154°10′05.90″ W)
CIXUL, AK	WP	(Lat. 58°43′04.78″ N, long. 153°25′52.53″ W)
OSBOE, AK	FIX	(Lat. 57°48′07.57″ N, long. 152°27′12.75″ W)
Kodiak, AK (ODK)	VOR/DME	(Lat. 57°46′30.13″ N, long. 152°20′23.42″ W)

* * * * *

Issued in Washington, DC, on August 16, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–17915 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0524; Airspace Docket No. 22–AEA–8]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace, and Revocation of Class E Airspace; Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E surface airspace, and removes Class E airspace designated as an extension to a Class D surface area for Hudson Valley Regional Airport, Poughkeepsie, NY, as an airspace evaluation determined an update is necessary. This action updates the airport's name and removes Kingston VORTAC from the Class E surface airspace description, as well as replaces the term Airport/Facility Directory with Chart Supplement in the descriptions. This action enhances the safety and management of controlled airspace within the national airspace system.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under Title 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 *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends airspace for Hudson Valley Regional Airport, Poughkeepsie, NY, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 31192, May 23, 2022) for Docket No. FAA–2022–0524 to amend Class D airspace and Class E surface airspace for Hudson Valley Regional Airport, Poughkeepsie, NY, by updating the airport's name, amending the radii of the existing airspace, and removing Class E airspace designated as an extension to Class D airspace. In addition, the FAA proposed to remove Kingston VORTAC from the Class E surface airspace description, as well as replace the term Airport/Facility Directory with Chart Supplement in the descriptions. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 became 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 routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending Class D airspace and Class E surface airspace, by increasing the radius to 4.4 miles (previously 4.0 miles), and amending the surface extensions. Also, this action removes Class E airspace designated as an extension to a Class D surface area for Hudson Valley Regional Airport, Poughkeepsie, NY, as the extensions are included in the Class D description. This action updates the airport's name to Hudson Valley Regional Airport (formerly Dutchess County Airport), and removes Kingston VORTAC from the Class E surface airspace description, as well as replaces the term Airport/Facility Directory with Chart Supplement in the descriptions. In addition, the city name is removed from the airport header, as per FAA Order 7400.2. This action enhances the safety and management of controlled airspace within the national airspace system.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11. FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Poughkeepsie, NY [Amended]

Hudson Valley Regional Airport, NY
(Lat. 41°37′36″ N, long. 73°53′03″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of Hudson Valley Regional Airport, and within 1.8 miles each side of the 051° bearing of the airport, extending from the 4.4-mile radius to 6.2 miles northeast of the airport, and within 1.0-miles each side of the 231° bearing of the airport, extending from the 4.4-mile radius to 6.2-miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA NY E2 Poughkeepsie, NY [Amended]

Hudson Valley Regional Airport, NY
(Lat. 41°37′36″ N, long. 73°53′03″ W)

That airspace extending upward from the surface within a 4.4-mile radius of Hudson Valley Regional Airport, and within 1.8 miles each side of the 051° bearing of the airport, extending from the 4.4-mile radius to 6.2 miles northeast of the airport, and within 1.0-miles each side of the 231° bearing of the airport, extending from the 4.4-mile radius to 6.2-miles southwest of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AEA NY E4 Poughkeepsie, NY [Removed]

Issued in College Park, Georgia, on August 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–18003 Filed 8–19–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0525; Airspace Docket No. 22–ASO–7]

RIN 2120–AA66

Amendment of Class E Airspace; Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Raleigh-Durham International Airport, Raleigh, NC, due to the decommissioning of the Leevy non-directional beacon (NDB) and cancellation of associated approaches. In addition, Class E airspace designated as an extension to a Class C surface area is amended by updating the airport geographic coordinates and updating the name of the Raleigh/Durham VORTAC. Also, Horace Williams Airport has been abandoned, and is no longer in need of

controlled airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, November 3, 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 *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace for Raleigh-Durham International Airport, Raleigh, NC, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 29238, May 13, 2022) for Docket No. FAA–2022–0525 to amend Class E airspace for Raleigh-Durham International Airport, Raleigh, NC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received advising the FAA that a group is researching the possible reopening of the now closed Horace Williams Airport. The FAA will remove the Class E airspace surrounding this airport, and establish modified airspace when/if the airport does reopen.

Class E airspace designations are published in Paragraphs 6003 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface at Raleigh-Durham International Airport, Raleigh, NC, due to the decommissioning of the Leevy NDB and cancellation of associated approaches. This action eliminates the northeast extension. Also, Class E airspace designated as an extension to a Class C surface area is amended by updating the airport's geographic coordinates and updating the name of the Raleigh/Durham VORTAC, (formerly Raleigh VORTAC). This action also removes the airspace surrounding Horace Williams Airport, as the airport has closed.

Class E airspace designations are published in Paragraphs 6003 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6003 Class E Airspace Designated as an Extension to Class C Area.

* * * * *

ASO NC E3 Raleigh, NC [Amended]

Raleigh-Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Raleigh/Durham VORTAC
(Lat. 35°52′21″ N, long. 78°47′00″ W)

That airspace extending upward from the surface within 3 miles each side of the Raleigh/Durham VORTAC 036°, 128° and 231° radials extending from a 5-mile radius of the Raleigh-Durham International Airport

to 7 miles northeast, southeast and southwest of the VORTAC.

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

* * * * *

ASO NC E5 Raleigh, NC [Amended]

Raleigh-Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Duke Medical Center, Point In Space Coordinates
(Lat. 35°59′48″ N, long. 78°55′49″ W)

That airspace extending upward from 700 feet or more above the surface within a 10-mile radius of Raleigh-Durham International Airport; and that airspace within a 6-mile radius of the point in space (lat. 35°59′48″ N, long. 78°55′49″ W) serving Duke Medical Center.

Issued in College Park, Georgia, on August 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–18015 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1005; Airspace Docket No. 22–AGL–29]

RIN 2120–AA66

Amendment of Class E Airspace; Sturgeon Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Sturgeon Bay, WI. The geographic coordinates of the airport are being updated to coincide with the FAA's aeronautical database. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, November 3, 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 *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Door County Cherryland Airport, Sturgeon Bay, WI, by updating geographic coordinates of the airport in the airspace legal description to coincide with the FAA's aeronautical database. This update is administrative change and does not change the airspace boundaries or operating requirements.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface at Door County Cherryland Airport, Sturgeon Bay, WI, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F,

Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

AGL WI E5 Sturgeon Bay, WI [Amended]

Door County Cherryland Airport, WI
(Lat. 44°50′37″ N, long. 87°25′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Door County Cherryland Airport.

Issued in Fort Worth, Texas, on August 17, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18014 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0811; Airspace Docket No. 19–AAL–60]

RIN 2120–AA66

Amendment to United States Area Navigation Route (RNAV) T–227; Fairbanks, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends RNAV route T–227 in the vicinity of Fairbanks, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, November 3, 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 *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 expands the availability of RNAV in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0811 in the **Federal Register** (86 FR 56234; October 8, 2021), amending RNAV route T–227 in the vicinity of Fairbanks, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. One comment, supporting the proposed action, was received. The commenter fully supported the FAA's Next Generation Air Transportation System (NextGen) efforts to modernize air traffic routes in Alaska using satellite based navigation.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

In the NPRM, the MORDI, AK; GENFU, AK; BINAL, AK; and GLOWS, AK, route points were each incorrectly referenced and listed as waypoints (WPs). Each of the listed route points are actually Fixes. This action corrects that error by listing each of them as a Fix. These corrections are editorial only and do not change the alignment of T–227.

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 amending RNAV route T–227 in the vicinity of Fairbanks, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The route amendment is described below.

T–227: T–227 currently extends between the Shemya, AK (SYA), VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Deadhorse, AK (SCC), VOR/Distance Measuring Equipment (VOR/DME) navigational aids. This action replaces the Port Heiden, AK (PDN), Non-Directional Beacon (NDB) route point with the WIXER, AK, WP; adds three WP route points (CULTI, AK; FEDGI, AK; and WEZZL, AK) between the WIXER WP and the AMOTT, AK, Fix; and removes the BATTY, AK, Fix from the route description. Additionally, this action adds the GLOWS, AK, Fix and PERZO, AK, WP between the Big Lake, AK, VORTAC and the Fairbanks, AK, VORTAC.

The full route description of the amended T–227 route is in the amendment to part 71 set forth below.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when

promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route T–227 in the vicinity of Fairbanks, AK 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), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. 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. Accordingly, 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 FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–227 Shemya, AK (SYA) to Deadhorse, AK (SCC) [Amended]

Shemya, AK (SYA)	VORTAC	(Lat. 52°43′05.78″ N, long. 174°03′43.50″ E)
JANNT, AK	WP	(Lat. 52°04′17.88″ N, long. 178°15′37.23″ W)
BAERE, AK	WP	(Lat. 52°12′11.96″ N, long. 176°08′08.53″ W)
ALEUT, AK	WP	(Lat. 54°14′16.58″ N, long. 166°32′51.82″ W)
MORDI, AK	FIX	(Lat. 54°52′49.87″ N, long. 165°03′15.24″ W)
GENFU, AK	FIX	(Lat. 55°23′18.64″ N, long. 163°06′20.78″ W)
BINAL, AK	FIX	(Lat. 55°45′59.99″ N, long. 161°59′56.43″ W)
WIXER, AK	WP	(Lat. 56°54′29.00″ N, long. 158°36′10.00″ W)
CULTI, AK	WP	(Lat. 58°15′11.91″ N, long. 156°31′19.57″ W)
FEDGI, AK	WP	(Lat. 59°30′10.87″ N, long. 154°14′14.80″ W)
WEZZL, AK	WP	(Lat. 59°53′13.86″ N, long. 152°24′12.63″ W)
AMOTT, AK	FIX	(Lat. 60°52′26.59″ N, long. 151°22′23.60″ W)
Big Lake, AK (BGQ)	VORTAC	(Lat. 61°34′09.96″ N, long. 149°58′01.77″ W)
GLOWS, AK	FIX	(Lat. 64°26′15.88″ N, long. 148°15′17.88″ W)
PERZO, AK	WP	(Lat. 64°40′22.99″ N, long. 148°07′20.15″ W)
Fairbanks, AK (FAI)	VORTAC	(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)
Deadhorse, AK (SCC)	VOR/DME	(Lat. 70°11′57.11″ N, long. 148°24′58.17″ W)

* * * * *

Issued in Washington, DC, on August 15, 2020.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–17913 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0694; Airspace Docket No. 22–ACE–12]

RIN 2120–AA66

Amendment of Class D and Class E Airspace and Establishment of Class E Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace and establishes Class E airspace at Columbia, MO. This action is the result of a biennial airspace review. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 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 *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface and establishes Class E airspace designated as an extension to Class D and Class E surface airspace at Columbia Regional Airport, Columbia, MO, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 33660; June 3, 2022) for Docket No. FAA–2022–0694 to amend the Class D and Class E airspace and establish Class E airspace at Columbia, MO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

Differences From the NPRM

Subsequent to the publication, the FAA discovered a typographical error in the geographic coordinates of the Columbia VOR/DME. ''lat. 38°48′29″ N'' should be ''lat. 38°48′39″ N.'' That error has been corrected in this action.

The Rule

This amendment to 14 CFR part 71:

Amends the Class D airspace at Columbia Regional Airport, Columbia, MO, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E surface airspace at Columbia Regional Airport by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and adds missing part-time language to the airspace legal description;

Establishes Class E airspace designated as an extension to Class D and Class E surface airspace at Columbia Regional Airport within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 4.3-mile radius of the Columbia Regional Airport to 7 mile north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the airport extending from the 4.3-mile radius of the airport to 9.7 miles northwest of the airport;

And amends the Class E airspace extending upward from 700 feet at Columbia Regional Airport by removing the Columbia Regional Airport ILS Localizer and the associated extensions from the airspace legal description as they are no longer needed; adds an extension 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 6.8-mile radius of the airport to 7 miles north of the Columbia VOR/DME; adds an extension 2 miles each side of the 315° bearing from the airport extending from the 6.8-mile radius of the airport to 10.7 miles northwest of the airport; adds an extension 2 miles each side of the Columbia VOR/DME 333° radial extending from the 6.8-mile radius of the airport to 11.1 miles northwest of the airport; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to a biennial airspace review.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and

effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Columbia Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE MO E2 Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)

Within a 4.3-mile radius of Columbia Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ACE MO E4 Columbia, MO [Establish]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)
Columbia VOR/DME
(Lat. 38°48′39″ N, long. 92°13′06″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 4.3-mile radius of the Columbia Regional Airport to 7 miles north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the Columbia Regional Airport extending from the 4.3 mile radius of the airport to 9.7 miles northwest of the airport.

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

* * * * *

ACE MO E5 Columbia, MO [Amended]

Columbia Regional Airport, MO
(Lat. 38°49′04″ N, long. 92°13′04″ W)
Columbia VOR/DME
(Lat. 38°48′39″ N, long. 92°13′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbia Regional Airport; and within 2.4 miles each side of the Columbia VOR/DME 019° radial extending from the 6.8-mile radius of the Columbia Regional Airport to 7 miles north of the Columbia VOR/DME; and within 2 miles each side of the 315° bearing from the Columbia Regional Airport extending from the 6.8-mile radius of the airport to 10.7 miles northwest of the airport; and within 2 miles each side of the Columbia VOR/DME 333° radial extending from the 6.8-mile radius of the Columbia Regional Airport to 11.1 miles northwest of the airport.

Issued in Fort Worth, Texas, on August 16, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–17937 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0432; Airspace Docket No. 22–ASO–5]

RIN 2120–AA66

Amendment of Class E Airspace; Greenwood, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Greenwood County Airport, Greenwood, SC, due to the decommissioning of the Coronaca non-directional beacon (NDB) and cancellation of associated approaches, as well as updating the airport's geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, November 3, 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 *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 31193, May 23, 2022) for Docket No. FAA–2022–0432 to amend Class E airspace extending upward from 700 feet above the surface at Greenwood County Airport, Greenwood, SC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface at Greenwood County Airport, Greenwood, SC, due to the decommissioning of the Coronaca NDB and cancellation of associated approaches. This action eliminates the

east extension and creates an extension to the west. This action also updates the airport's geographic coordinates to coincide with the FAA's database.

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

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASO SC E5 Greenwood, SC [Amended]

Greenwood County Airport, SC
(Lat. 34°15′01″ N, long. 82°09′28″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greenwood County Airport, and within 2-miles each side of the 265° bearing of the airport extending from the 7-mile radius to 9.1-miles west of the airport.

Issued in College Park, Georgia, on August 15, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–18017 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0812; Airspace Docket No. 19–AAL–71]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–267; Nome, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–267 in the vicinity of Nome, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, November 3, 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 *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 expands the availability of RNAV route structure in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2021–0812 in the **Federal Register** (86 FR 55752; October 7, 2021), amending RNAV route T–267 in the vicinity of Nome, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There was one comment received supporting this action. The commenter fully supported and endorsed the proposed action.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this

document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

In the NPRM, the BALIN, AK, route point was incorrectly listed as a waypoint (WP). This action corrects that error and lists the BALIN, AK, route point as a Fix. This correction is editorial only and does not change the alignment of T–267.

Additionally, subsequent to the NPRM, the FAA determined it was necessary to relocate the JODGU, AK, and ZISDU, AK, WPs to address instrument flight procedure concerns related to two points (*i.e.,* Fix, navigational aid, waypoint) being located too close to one another. As a result, the latitude/longitude geographic coordinates for the JODGU WP are changed from ''Lat. 69°44′11.33″ N, long. 162°59′46.66″ W'' to ''Lat. 69°44′11.47″ N, long. 163°00′04.08″ W'', and for the ZISDU WP are changed from ''Lat. 70°28′08.64″ N, long. 157°25′38.98″ W'' to ''Lat. 70°28′08.35″ N, long. 157°25′20.99″ W'' These changes are minor adjustments to the route structure and move each WP by approximately 600 feet from their proposed locations.

Lastly, the FAA has determined it is necessary to change the NWIAF, AK, and BTURN, AK, WP names to comply with FAA administrative guidance for FIX name reservations. As such, the ''NWIAF, AK,'' WP is renamed ''HIBLA, AK,'' and the ''BTURN, AK,'' WP is renamed ''UBASY, AK.'' The WP name changes are editorial only and do not change the alignment of T–267.

This action incorporates all of the changes noted above.

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 amending RNAV route T–267 in the vicinity of Nome, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The route change is described below.

T–267: T–267 extends between the Nome, AK (OME), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Kotzebue, AK (OTZ), VOR/DME. This action extends the route north from the Kotzebue VOR/DME to the ZISDU, AK, WP to provide alternate navigation for Colored Federal airways B–3 and G–18. The resulting RNAV route extends between the Nome, AK (OME), VOR/DME and the ZISDU, AK, WP.

The full route description of the new RNAV route is the amendment to part 71 as set forth below.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route T–267 in the vicinity of Nome, AK, 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), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. 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. Accordingly, 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.

§ 71.171 [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 6011 United States Area Navigation Routes

* * * * *

T–267 Nome, AK (OME) to ZISDU, AK [Amended]

Nome, AK (OME)	VOR/DME	(Lat. 64°29′06.39″ N, long. 165°15′11.43″ W)
BALIN, AK	FIX	(Lat. 66°33′54.54″ N, long. 161°34′32.45″ W)
Kotzebue, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)

SICOV, AK	WP	(Lat. 67°20′44.42″ N, long. 162°49′58.62″ W)
HIBLA, AK	WP	(Lat. 67°42′21.09″ N, long. 162°29′30.89″ W)
UBASY, AK	WP	(Lat. 68°14′34.30″ N, long. 163°06′13.70″ W)
PODKE, AK	WP	(Lat. 68°59′30.64″ N, long. 163°07′52.26″ W)
JODGU, AK	WP	(Lat. 69°44′11.47″ N, long. 163°00′04.08″ W)
ZISDU, AK	WP	(Lat. 70°28′08.35″ N, long. 157°25′20.99″ W)

* * * * *

Issued in Washington, DC, on August 16, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–17914 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1006; Airspace Docket No. 22–ACE–15]

RIN 2120–AA66

Amendment of Class E Airspace; Fort Dodge, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Fort Dodge, IA. The geographic coordinates of the airport are being updated to coincide with the FAA's aeronautical database. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, November 3, 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 *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Fort Dodge Regional Airport, Fort Dodge, IA, by updating geographic coordinates of the airport in the airspace legal description to coincide with the FAA's aeronautical database. This update is administrative change and does not change the airspace boundaries or operating requirements.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71:

Amends the Class E surface airspace at Fort Dodge Regional Airport, Fort Dodge, IA, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and updates the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface at Fort Dodge Regional Airport by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE IA E2 Fort Dodge, IA [Amended]

Fort Dodge Regional Airport, IA
(Lat. 42°33′04″ N, long. 94°11′31″ W)

Within a 4.2-mile radius of Fort Dodge Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ACE IA E5 Fort Dodge, IA [Amended]

Fort Dodge Regional Airport, IA
(Lat. 42°33′04″ N, long. 94°11′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Fort Dodge Regional Airport.

Issued in Fort Worth, Texas, on August 17, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–18008 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 478 and 479

[ATF–2021–0001; Docket No. ATF 2021R–05F; AG Order No. 5374–2022]

RIN 1140–AA54

Definition of ''Frame or Receiver'' and Identification of Firearms; Corrections

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Final rule; corrections.

SUMMARY: The Department of Justice (''Department'') is correcting a final rule that appeared in the **Federal Register** on April 26, 2022, with an effective date of August 24, 2022. The final rule amended Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') regulations by removing and replacing the regulatory definitions of ''firearm frame or receiver'' and ''frame or receiver.'' The document also amended ATF's definitions of ''firearm'' and ''gunsmith'' to clarify the meaning of those terms, and to provide definitions of terms such as ''complete weapon,'' ''complete muffler or silencer device,'' ''multi-piece frame or receiver,'' ''privately made firearm,'' and ''readily'' for purposes of clarity given advancements in firearms technology. Additionally, the final rule amended ATF's regulations on marking and recordkeeping that are necessary to implement the new or amended definitions. This document makes some minor technical corrections to the final rule, which otherwise remains the same as previously published.

DATES: Effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori by email at *ORA@atf.gov;* by mail at Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington, DC 20226; or by telephone at (202) 648–7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 26, 2022, the Department issued a final rule titled ''Definition of 'Frame or Receiver' and Identification of Firearms,'' amending ATF's regulations in 27 CFR parts 447, 478, and 479 (87 FR 24652), with an effective date of August 24, 2022.

Due to the complexity of this rulemaking process and the resulting significant number of comments and revisions in response, the final rule inadvertently contained some technical errors in the regulatory text that this document corrects. As reflected below, this document corrects the following technical errors in the regulatory text as adopted in the final rule:

- Incorrectly labeling subparagraphs in § 479.102(a)(3) and (b)(3) with letters instead of Roman numerals.
- Omitting part of the **Federal Register** date instruction in § 478.12(f)(2), with the result that the rule as published contained the instruction parenthetical instead of the actual date.
- Causing confusion by including the word ''and'' between two terms describing handgun grips in § 478.12(a)(3), instead of indicating that the second term was an example of the first term.
- Leaving out a reference to the manufacturer role of people identified as ''you'' in § 479.102(a)(6), and leaving out the words ''or remade'' in the phrase ''remanufactured or remade'' in the definition of ''Privately made firearm (PMF)'' in § 478.11. In both instances, these omissions could create confusion about the actors in those provisions.
- Failing to replace the term ''firearm'' with ''frame or receiver'' in the last sentence of the definition of ''Importer's or manufacturer's serial number'' in § 478.11, as intended, thus unintentionally broadening the requirement to preserve the licensee name, city, or state wherever it may appear on a fully assembled weapon. Instead, the purpose of this provision is to require preservation of the licensee name, city, or state only on the frame or receiver of any such weapon.
- Failing to include a cross-reference to the definition of ''privately made firearm'' in § 479.11, potentially creating inconsistencies between the regulations.
- Failing to replace a broad reference in § 478.125(i) to requirements ''in this part'' with the specific section reference to the timeframe required by § 478.125(e) for firearms that better identifies and clarifies those requirements for users.
- And, in four paragraphs, §§ 478.12(a)(1), (a)(4)(iv), and (d) and 478.92(a)(1)(iii), inadvertently indicating that a sear (or equivalent) component was the primary energized component of a handgun as a result of the placement of the terms in relation to each other, also creating confusion for readers.

This document corrects those technical errors before the final rule's effective date.

§ 478.11 [Corrected]

■ 1. On page 24735, in the first column, the definition of ''Importer's or manufacturer's serial number'' is corrected by removing the last word ''firearm'' and adding in its place the words ''frame or receiver''.

■ 2. On page 24735, in the seventh line of the second column, the definition of ''Privately made firearm (PMF)'' is corrected in the parenthetical at the end by adding the words ''or remade'' after the word ''remanufactured''.

■ 3. On page 24735, in the third column, § 478.12 is corrected by revising paragraph (a)(1) and the second sentence in paragraph (a)(3) to read as follows:

§ 478.12 [Corrected]

(a) * * *

(1) The term ''frame'' means the part of a handgun, or variants thereof, that provides housing or a structure for the component (*i.e.,* sear or equivalent) designed to hold back the hammer, striker, bolt, or similar primary

energized component prior to initiation of the firing sequence, even if pins or other attachments are required to connect such component (*i.e.,* sear or equivalent) to the housing or structure.

* * * * *

(3) * * * For example, an AK-type firearm with a short stock (*i.e.,* pistol grip) is a pistol variant of an AK-type rifle, an AR-type firearm with a short stock (*i.e.,* pistol grip) is a pistol variant of an AR-type rifle, and a revolving cylinder shotgun is a shotgun variant of a revolver.

* * * * *

■ 4. On page 24736, in the second column, § 478.12(a)(4)(iv) is corrected at the end of the paragraph by removing the words ''energized component (*i.e.,* sear or equivalent)'' and adding in their place the words ''sear or equivalent component''.

■ 5. On page 24739, in the third column, in line 3, § 478.12(d) is corrected by removing the word ''energized'' and adding in its place the words ''sear or equivalent''.

■ 6. On page 24741, in the first column, § 478.12(f)(2) is corrected at the end of the last sentence by removing ''[date of publication of the rule]'' and adding in its place ''April 26, 2022''.

§ 478.92 [Corrected]

■ 7. On page 24741, in the third column, in line 2, § 478.92(a)(1)(iii) is corrected by removing the words ''primary energized'' and adding in their place the words ''sear or equivalent''.

§ 478.125 [Corrected]

■ 8. On page 24746, in the first column, § 478.125(i) is corrected at the end of the first sentence by removing the words ''as required by this part'' and adding in their place ''within the timeframe required by paragraph (e) of this section for firearms''.

■ 9. On page 24747, in the first column, amendatory instruction 18c for § 479.11 is corrected to read ''c. Add in alphabetical order definitions for ''Privately made firearm (PMF)'' and ''Readily'';''. The correctly added definition of ''Privately made firearm (PMF)'' reads as follows:

§ 479.11 [Corrected]

* * * * *

Privately made firearm (PMF). The term ''privately made firearm (PMF)'' shall have the same meaning as in § 478.11 of this subchapter.

* * * * *

§ 479.102 [Corrected]

■ 10. On page 24747, in the third column, § 479.102(a)(3) is corrected by redesignating paragraphs (a)(3)(A), (B), and (C) as paragraphs (a)(3)(i), (ii), and (iii).

■ 11. On page 24748, in the first column, § 479.102(a)(6) is corrected in the first sentence by adding '', as a manufacturer,'' in between the words ''You'' and ''shall''.

■ 12. On page 24748, in the second column, § 479.102(b)(3) is corrected by redesignating paragraphs (b)(3)(A), (B), and (C) as paragraphs (b)(3)(i), (ii), and (iii).

Dated: August 12, 2022.

Laura E. Heim,

Senior Counsel.

[FR Doc. 2022–17741 Filed 8–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0621]

Special Local Regulation; 95th Hampton Cup Regatta; Mill Creek, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the 95th Hampton Cup Regatta on Mill Creek, Hampton, VA, on September 17th and 18th, 2022, to provide for the safety of life on navigable waterways during this event. Coast Guard regulations for marine events within the Fifth Coast Guard District identifies the regulated area for this event. During the enforcement periods, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Virginia.

DATES: The regulations in 33 CFR 100.501 will be enforced for the location identified for the Hampton Cup Regatta in table 3 to paragraph (i)(3) from 10 a.m. until 5 p.m. on September 17 and 18, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, 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: The Coast Guard will enforce the special local regulation in 33 CFR 100.501 for the Hampton Cup Regatta from 10 a.m. to 5 p.m. on September 17th and 18th, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Coast Guard regulations for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Hampton Cup Regatta which encompasses portions of Mill Creek. During the enforcement periods, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

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

Dated: August 16, 2022.

Jennifer A. Stockwell,

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

[FR Doc. 2022–18034 Filed 8–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0408]

Special Local Regulations; 2nd Annual St. Petersburg P1 Powerboat Gran Prix; Tampa Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for certain waters of Tampa Bay, FL. in the vicinity of the St. Petersburg Pier during the Annual St. Petersburg P1 Powerboat Grand Prix. Our regulation for marine events within the Seventh Coast Guard District, Sector St. Petersburg identifies the regulated area for this event. During the enforcement period, all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the Captain of the Port (COTP) St. Petersburg or a designated representative.

DATES: This rule will be enforced daily from 6:30 a.m. until 7:00 p.m., on September 3, 2022 through September 4, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician Second Class Regina Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.703, Table 1 to § 100.703, Item No. 5, for the St. Petersburg P–1 Powerboat Grand Prix, from 6:30 a.m. until 7:00 p.m., on September 3, 2022 through September 4, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, in § 100.703, Table 1 to § 100.703, Item No. 5, specifies the location of the regulated area for the St. Petersburg P–1 Powerboat Grand Prix which encompasses portions of Tampa Bay near the St. Petersburg Pier. During the enforcement period, as reflected in § 100.703(c), all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the COTP St. Petersburg or a designated representative. If you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any designated representative. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Spectators may contact the COTP St. Petersburg or designated representative to request permission to enter, transit through, remain within, or anchor in the regulated area. If permission is granted, spectators must abide by the directions of the COTP St. Petersburg or a designated representative.

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

Dated: August 16, 2022.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port Sector St Petersburg.

[FR Doc. 2022–18121 Filed 8–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0612]

RIN 1625–AA87

Security Zone; Seddon Channel, VIP Visit, Tampa, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the Tampa Convention Center, Tampa, FL, during a Government ceremony featuring several high-level officials. The security zone will cover all navigable waters of the Seddon Channel and Hillsborough River within 100 yards of the Tampa Convention Center, Tampa, FL. The security zone is necessary to protect the official party, the public, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Entering or remaining in this security zone is prohibited unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: This rule is effective from 5 a.m. through 4 p.m., on August 30, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0612 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician Second Class Regina L Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Captain of the Port St. Petersburg did not receive sufficient notice of this visit. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Any delay in the effective date of this rule would be contrary to the public interest as immediate action is needed to protect the official party, the public, and the surrounding waterway from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide adequate security to protect the official party, the public, and the surrounding waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector St Petersburg (COTP) has determined that potential hazards associated with this Government ceremony starting August 30, 2022, has security concern for the official party within a 100-yard radius of the Tampa Convention center in the waters of the Seddon Channel and the Hillsborough River. This rule is needed to protect the official party, the public, and the surrounding waterway from potential terrorist threats.

IV. Discussion of the Rule

This rule establishes a security zone from 5 a.m. through 4 p.m., on August 30, 2022. The security zone will cover all navigable waters of Seddon Channel and the Hillborough River within 100 yards of the Tampa Convention Center, Tampa, FL. The duration of the zone is intended to ensure the security of the VIP during the scheduled event. No vessel or person will be permitted to enter, transit through, anchor in or remain within the security zone without obtaining permission from the COTP or a designated representative. If

authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the security zone by Broadcast Notice to Mariners, or by on-scene designated representatives.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the security zone may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the security zone by Broadcast Notice to Mariners and on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on: (1) the security zone will be enforced for approximately 11 hours; (2) although persons and vessels will not be able to enter or remain in the security zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) persons and vessels may still enter or remain in this security zone if authorized by the Captain of the Port St. Petersburg or a designated representative.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the security 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 only 11 hours that will prohibit entry within 100 yards of the Tampa Convention Center in the waters of the Seddon Channel and Hillsborough River. 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.T07–0612 to read as follows:

§ 165.T07–0612 Security Zone; Seddon Channel, VIP Visit, Tampa, FL.

(a) *Location.* The following is a security zone: All navigable waters of the Seddon Channel and Hillsborough River within the following area: South of the Platt Street Bridge from position 27°56′30.1″ N, 82°27′29.84″ W, thence to positon 27°56′27.37″ N, 82°27′29.32″ W, thence to position 27°56′24.78″ N, 82°27′23.3″ W, thence to position 27°56′26.577″ N, 82°27′21.419″ W, thence to 27°56′30.1″ N, 82°27′29.84″ W.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone unless authorized by the COTP St. Petersburg or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or designated representative.

(2) Persons who must notify or request authorization from the COTP St. Petersburg may do so by telephone at (727) 824–7534, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from 5 a.m. through 4 p.m., on August 30, 2022.

Dated: August 16, 2022.

Micheal P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St Petersburg.

[FR Doc. 2022–18069 Filed 8–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0716]

RIN 1625–AA00

Safety Zones; Pensacola, Panama City, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: This temporary final rule would implement a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Coast Guard is establishing three temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by Space Exploration Technologies Corporation (SpaceX) in support of the National Aeronautics and Space Administration (NASA) from August 16, 2022 until September 30, 2022. These three temporary safety zones are located within the Captain of the Port Sector Mobile area of responsibility offshore of Pensacola, Panama City, and Tallahassee, Florida. This rule would prohibit U.S. flagged vessels from entering any of the temporary safety zones unless authorized by the Captain of the Port Sector Mobile or a designated representative. Foreign-flagged vessels would be encouraged to remain outside the safety zones. This action is necessary to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in the U.S. Exclusive Economic Zone (EEZ). It is also necessary to provide for the safe recovery of reentry vehicles, and any personnel involved in reentry services, after the splashdown.

DATES: This rule is effective without actual notice from August 22, 2022 until September 30, 2022. For the purposes of enforcement, actual notice will be used from August 16, 2022 until August 22, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0716 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Andrew Anderson, Sector Mobile Chief of Waterways (spw), U.S. Coast Guard; telephone (251) 441–5768, email *Andrew.S.Anderson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FR Federal Register
NASA National Aeronautics and Space Administration
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
Space X Space Exploration Technologies Corporation

II. Background, Purpose, and Legal Basis

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a two-year pilot program to establish and implement a process to establish safety zones to address special activities in the U.S. Exclusive Economic Zone (EEZ).[1] These special activities include space activities[2] carried out by United States (U.S.) citizens. Terms used to describe space activities, including *launch, reentry site, and reentry vehicle,* are defined in 51 U.S.C. 50902, and in this document.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch[3]

[1] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

[2] *Space Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

[3] The term *launch* is defined in 51 U.S.C. 50902.

operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA), and private space operators, including Space Exploration Technologies Corporation (SpaceX). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety of launch operations and waterway users.

During this engagement, the Coast Guard was informed of space reentry vehicles and recovery operations in the U.S. EEZ. In accordance with 51 U.S.C. Section 50902, ''reentry vehicle'' is defined as a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact. SpaceX, a U.S. company, has identified three reentry sites [4] within the U.S. EEZ of the Captain of the Port Sector Mobile area of responsibility (AOR) expected to be used for the splashdown [5] and recovery of reentry vehicles. All of these sites are located in the Gulf of Mexico off the Coast of Florida (FL).

On May 4, 2022, we published a temporary final rule in the **Federal Register** (87 FR 26276) for two anticipated reentry vehicle recovery missions within the Captain of the Port Sector Mobile AOR offshore of Panama City, Pensacola, and Tallahassee, FL, from April 17, 2022, through May 15, 2022. Based on the date the Coast Guard was informed of the reentry, and the immediate need to establish the safety zone, the Coast Guard did not have sufficient time to publish a notice of proposed rulemaking (NPRM) for that rule.

The purpose of this rule is to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.[6] The Coast Guard is proposing this rule under authority of section 8343 of the Authorization Act.

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 an NPRM with respect to this rule because it is impracticable and contrary to the public interest. The National Aeronautics and Space Administration (NASA) Crew-3 capsule recovery mission was approved and scheduled less than 30 days before the need for the three safety zones to be in place starting on August 16, 2022. Publishing an NPRM would be impracticable and contrary to the public interest since the missions would begin before completion of the rulemaking process, thereby inhibiting the Coast Guard's ability to protect against the hazards associated with the recovery missions.

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 because the temporary safety zones must be established by August 16, 2022, to mitigate safety concerns during the capsule recovery missions.

III. Discussion of Proposed Rule

The Coast Guard is establishing three temporary safety zones in the U.S. EEZ for the safe reentry vehicle splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA missions between August 16, 2022 and September 30, 2022, with one vehicle recovery taking place in the month of August and one vehicle recovery taking place in the month of September.

The temporary safety zones are located within the Captain of the Port Sector Mobile AOR offshore of Panama City, Pensacola, and Tallahassee, FL in the Gulf of Mexico. The temporary final rule prohibits U.S.-flagged vessels from entering any of the safety zones unless authorized by the Captain of the Port Sector Mobile or a designated representative. Because the safety zones are within the U.S. EEZ, only U.S.-flagged vessels would be subject to enforcement. However, all foreign-flagged vessels are encouraged to remain outside the safety zones.

The three temporary safety zones are located off the coast of FL in the Gulf of Mexico in the following areas:

(1) *Pensacola site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.991° N	−087.500° W
Point 2	29.800° N	−087.281° W
Point 3	29.609° N	−087.500° W
Point 4	29.800° N	−087.500° W

(2) *Panama City site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.907° N	−086.183° W
Point 2	29.716° N	−085.964° W
Point 3	29.525° N	−086.183° W
Point 4	29.716° N	−086.402° W

(3) *Tallahassee site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.474° N	−084.200° W
Point 2	29.283° N	−083.982° W
Point 3	29.092° N	−084.200° W
Point 4	29.283° N	−084.418° W

The coordinates for the safety zones are based on the furthest north, east, south, and west points of the reentry vehicles splashdown and are determined from data and modeling by SpaceX and NASA. The coordinates take into account the trajectories of the reentry vehicles coming out of orbit, the potential risk to the public, and the proximity to medical facilities that meet NASA requirements. The specific coordinates for the three temporary safety zones are presented in the regulatory text at the end of this document.

To the extent feasible, the Captain of the Port Sector Mobile or a designated representative will inform the public of the activation of the three temporary safety zones by Broadcast Notice to Mariners (BNM) on VHF–FM channel 16 and/or Marine Safety Information Bulletin (MSIB) (as appropriate) at least two days before the reentry vehicle splashdown. These broadcasts will identify the approximate date(s) during which a reentry vehicle splashdown and recovery operations would occur.

To the extent possible, twenty-four hours before a reentry vehicle splashdown and recovery operations, the Captain of the Port Sector Mobile or designated representative will inform the public that only one of the three

[4] *Reentry site* means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the FAA Administrator issues or transfers under this chapter).

[5] *Splashdown* refers to the landing of a reentry vehicle into a body of water.

[6] *Reentry Services* means (1) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and (2) the conduct of a reentry

safety zones would remain activated (subject to enforcement) until announced by BNM on VHF–FM channel 16, and/or MSIB (as appropriate) that the safety zone is no longer subject to enforcement. The specific temporary safety zone to be enforced will be based on varying mission and environmental factors, including atmospheric conditions, sea state, weather, and orbital calculations.

The MSIB will include the geographic coordinates of the activated safety zone, a map identifying the location of the activated safety zone, and information related to potential hazards associated with a reentry vehicle splashdown and recovery operations associated with space activities, including marine environmental and public health hazards, such the release of hydrazine and other potential oil or hazardous substances.

When the safety zone is activated, the Captain of the Port Sector Mobile or a designated representative will be able to restrict U.S.-flagged vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with space activities. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. This includes protection during the recovery of a reentry vehicle, and the protection of personnel involved in reentry services and space support vessels.[7]

After a reentry vehicle splashdown, the Captain of the Port Sector Mobile or a designated representative will grant general permission to come no closer than three nautical miles within the activated safety zone from any reentry vehicle or space support vessel engaged in the recovery operations. The recovery operations are expected to last approximately one hour. That should allow for sufficient time to let any potential toxic materials clear the reentry vehicle, recovery of the reentry vehicle by the space support vessel, and address any potential medical evacuations for any personnel involved in reentry services that were onboard the reentry vehicle.

Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the Captain of the Port Sector Mobile or designated representative would issue a BNM on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. A photograph of a reentry vehicle and space support vessel expected to use the reentry sites are available in the docket.

[7] *Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and scope of the safety zones. The safety zones are limited in size and location to only those areas where capsule re-entry is reasonably occurs. The safety zones are limited in scope, as vessel traffic will be able to safely transit around the safety zones which will impact a small part of the United States exclusive economic zone (EEZ) within the Gulf of Mexico.

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.

The safety zone activation and thus restriction to the public is expected to be approximately two hours per capsule recovery, and we anticipate one splash down during the effective period of this rule. Vessels would be able to transit around the activated safety zone location during this recovery. We do not anticipate any significant economic impact resulting from activation of the safety zones.

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 the establishing of three temporary safety zones, one of which may be activated on one occasion for approximately two hours between August 16, 2022 and September 30, 2022 for a SpaceX and NASA mission. 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; section 8343 of Pub. L. 116–283, 134 Stat. 3388, 4710; 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.T08–0716 to read as follows:

§ 165.T08–0716 Safety Zones; Pensacola, Panama City, and Tallahassee, Florida.

(a) *Location.* The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984. The following areas are safety zones:

(1) *Pensacola site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.991° N	−087.500° W
Point 2	29.800° N	−087.281° W
Point 3	29.609° N	−087.500° W
Point 4	29.800° N	−087.500° W

(2) *Panama City site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.907° N	−086.183° W
Point 2	29.716° N	−085.964° W
Point 3	29.525° N	−086.183° W
Point 4	29.716° N	−086.402° W

(3) *Tallahassee site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29.474° N	−084.200° W
Point 2	29.283° N	−083.982° W
Point 3	29.092° N	−084.200° W
Point 4	29.283° N	−084.418° W

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

Designated representative means a Coast Guard Captain of the Port Sector Mobile; Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating a Coast Guard vessel; Coast Guard Representatives in the Merrill Operations Center; and other officers designated by the Captain of the Port Sector Mobile or assisting the Captain of the Port Sector Mobile in the enforcement of the safety zones.

Reentry Services means:

(1) Activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and

(2) The conduct of a reentry.

Reentry Vehicle means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Space Support Vessel means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

Splashdown means the landing of a reentry vehicle into a body of water.

(c) *Regulations.* (1) Because the safety zones described in paragraph (a) of this section are within the U.S. Exclusive Economic Zone, only U.S. flagged vessels are subject to enforcement. All foreign-flagged vessels are encouraged to remain outside the safety zones.

(2) In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S. flagged vessel may enter the safety zones described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Mobile or a designated representative, except as provided in paragraph (d)(3) of this section.

(d) *Enforcement periods.* (1) To the extent possible, at least two days before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public of the activation of the three safety zones described in paragraph (a) of this section by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) for at least two days before the splashdown.

(2) To the extent possible, twenty-four hours before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public that only one of the three safety zones described in paragraph (a) will remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appriprate) that the safety zone is no longer subject to enforcement.

(3) After a reentry vehicle splashdown, the Captain of the Port Sector Mobile or a designated representative will grant general permission to come no closer than three nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in paragraph (a) of this section.

(4) Once a reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the Captain of the Port Sector Mobile or

designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement.

(e) *Effective period.* This rule is subject to enforcement from August 16, 2022, until September 30, 2022.

Dated: August 16, 2022.

Ulysses S. Mullins,

Captain, Commander, Coast Guard Sector Mobile, Captain of the Port Mobile.

[FR Doc. 2022–18024 Filed 8–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0712]

RIN 1625–AA00

Safety Zone; Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Inner Harbor. The safety zone is needed to protect personnel, vessels, and the marine environment on these navigable waters in Baltimore, MD, September 9, 2022–September 11, 2022, from potential hazards during multi-agency helicopter safety demonstrations in support of the Maryland Fleet Week and Flyover Baltimore 2022. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 1 p.m. on September 9, 2022, through 4 p.m. on September 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0712 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@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 it is impracticable and contrary to the public interest to publish an NPRM because we must take immediate action to establish this safety zone by September 9, 2022, to respond to potential safety hazards associated with the event. Potential safety hazards include low-hanging ropes and cables, and helicopter rotor downwash and noise. Event planners did not notify the Coast Guard with details of the event until August 11, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the helicopter safety demonstrations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port, Maryland-National Capital Region (COTP) has determined that potential hazards associated with the helicopter safety demonstrations on September 9, 2022, September 10, 2022, and September 11, 2022, will be a safety concern for anyone near the demonstration site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled events.

IV. Discussion of the Rule

This rule establishes a safety zone from 1 p.m. on September 9, 2022, through 4 p.m. on September 11, 2022. This safety zone will be enforced from 1 p.m. to 4 p.m. on September 9, 2022, from 1 p.m. to 4 p.m. on September 10, 2022, and from 1 p.m. to 4 p.m. on September 11, 2022. The safety zone will cover all navigable waters of the Inner Harbor, encompassed by a line connecting the following points: beginning at Inner Harbor Pier 6 at position latitude 39°16′59″ N, longitude 076°36′12″ W, thence south to the Harborview Towers pier at latitude 39°16′41″ N, longitude 076°36′12″ W, thence northerly and easterly along the shoreline to and terminating at the point of origin located in Baltimore, MD. The area of the safety zone is approximately 2,000 yards in length and 500 yards in width. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the demonstrations. 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 location and duration of the safety zone. This safety zone will impact the Inner Harbor for 9 total enforcement hours. We anticipate that there will be no vessels that are unable to conduct business. Commercial fishing vessels and towing vessels are not impacted by this rulemaking. Excursion vessels and water taxis do operate in this area, however, the impact to these waterway users is minimized because of the extensive outreach that has been conducted for the Maryland Fleet Week and Flyover Baltimore 2022 and the involvement of the water taxis in the event planning process. Moreover, the Coast Guard will issue a Broadcast

Notice to Mariners via VHF–FM marine channel 16 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 safety zone lasting only 9 total enforcement hours that will prohibit entry within the Inner Harbor. 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.T05–0712 to read as follows:

§ 165.T05–0712 Safety Zone; Inner Harbor, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Inner Harbor, encompassed by a line connecting the following points: beginning at Inner Harbor Pier 6 at position latitude 39°16′59″ N, longitude 076°36′12″ W, thence south to the Harborview Towers pier at latitude 39°16′41″ N, longitude 076°36′12″ W, thence northerly and easterly along the shoreline to and terminating at the point of origin, located in Baltimore, MD. These coordinates are based on datum NAD 1983.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Vessels already at berth or moored at the time the safety zone is implemented do not have to depart the zone or request permission to remain moored.

(4) 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 officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 1 p.m. to 4 p.m. on September 9, 2022, from 1 p.m. to 4 p.m. on September 10, 2022, and from 1 p.m. to 4 p.m. on September 11, 2022.

Dated: August 17, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–18032 Filed 8–19–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0096; FRL–10020–01–R9]

Approval of California Air Plan Revisions, Eastern Kern County Air Pollution Control District and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Eastern Kern Air Pollution Control District (EKAPCD) and Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions were submitted by the California Air Resources Board (CARB) in response to EPA's June 12, 2015, finding of substantial inadequacy and SIP call for certain provisions in the SIP related to affirmative defenses applicable to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is finalizing approval of the SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or the Act) and correct deficiencies identified in the June 12, 2015 SIP call.

DATES: These rules will be effective on September 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0096. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Background

On February 22, 2013, the EPA issued a **Federal Register** notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereafter referred to as the ''2015 SSM SIP Action.'' [2] The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemptions and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. The EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

The EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[3] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to EKAPCD and ICAPCD in 2015. It also did not alter the EPA's prior proposal from 2017 to approve the EKAPCD and ICAPCD SIP revisions at issue in this action. The 2020 Memorandum did, however, indicate the EPA's intent at the time to review SIP calls that were issued in the 2015

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] 80 FR 33839.

[3] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

SSM SIP Action to determine whether the EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced the EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[4] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[5] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency takes action on SIP submissions, including EKAPCD's and ICAPCD's SIP submittal, provided in response to the 2015 SIP call.

With regards to EKAPCD and ICAPCD, the SIP call identified Rules 111 because the rules contained improper affirmative defenses for excess emissions during startup, shutdown, and malfunction events. On May 1, 2017 (82 FR 20295), the EPA proposed to approve removal of Rules 111 from the California SIP.

Local agency	Rule No.	Rule title	Rescinded	Submitted
EKAPCD	111	Equipment Breakdown	11/10/16	12/06/16
ICAPCD	111	Equipment Breakdown	09/22/16	03/28/16

As discussed in the proposal, EPA proposed to approve the removal of Rules 111 from the EKAPCD and ICAPCD portions of the California SIP because such removal is consistent with CAA requirements and would correct the deficiency identified by the Agency in the 2015 SSM SIP Action. EKAPCD and ICAPCD are retaining the affirmative defenses solely for state law purposes, outside of the EPA approved SIP. Removal of the affirmative defenses from the SIP is also consistent with the EPA policy for exclusion of ''state law only'' provisions from SIPs and will serve to minimize any potential confusion about the inapplicability of the affirmative defense provisions in Federal court enforcement actions.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. EPA acknowledges that over four years have elapsed since the comment period closed. No additional comment period is needed because nothing in the intervening time period—including the issuance and subsequent withdrawal of the 2020 Memorandum—changed the basis for EPA's proposed action or the public's opportunity to view and comment on that basis. Accordingly, the May 1, 2017 proposal provided the public with a full opportunity to comment on the issues raised by the proposed action. During this period, we received one comment. A summary of the comment from the SSM Coalition (''commenter'') and EPA's response is provided below.

Comment: The commenter states that the approach EPA took in the SSM SIP action is based on an improper view of EPA's SIP call authority, an inappropriate view of the flexibility Congress gave states to develop SIPs, an incorrect reading of the United States Court of Appeals for the District of Columbia (D.C. Circuit) decision in *Sierra Club* v. *EPA,* an incorrect reading of the definition of ''emission limitation and emission standard'' in CAA section 302(k), and ''unreasonable or insufficiently supported assumptions'' about SSM events and emissions during SSM periods. The commenter notes that these objections to EPA's approach were stated in detail in comments on the proposed SSM SIP action and in briefs filed in the D.C. Circuit in consolidated challenges to the SSM SIP action, which the commenter incorporates by reference into its comment letter.

Pointing to the various objections that the SSM Coalition and others raised about the SSM SIP action, the commenter concludes that it is inappropriate for the EPA to finalize its proposed approval of EKAPCD's and ICAPCD's response to the SSM SIP call until litigation before the D.C. Circuit is resolved. In support of this claim, the commenter points to statements made in 2017 by the Trump Administration about reviewing the underlying basis of the SSM SIP action and suggests that EPA withdraw the proposed action on EKAPCD's and ICAPCD's Rules 111 because there may be a different rationale for EPA's position on the California SIP revisions after review of the underlying legal and policy issues by the D.C. Circuit and/or EPA.

Response: The EPA respectfully disagrees with this comment. To the extent that the commenter is incorporating by reference comments made during the public comment period on the proposed SSM SIP action, we point to our responses in the 2015 final rulemaking and note that the comments were carefully considered before finalizing that action. The comments on the proposed SSM SIP action do not alter the basis for our proposed or final actions on the EKAPCD and ICAPCD submittals, which are based on the 2015 SSM SIP final rulemaking.

The Agency also acknowledges the commenter's concern that there exist pending challenges to the 2015 SSM SIP action in the D.C. Circuit. However, there is no requirement or expectation that EPA must postpone action while awaiting a court decision. EKAPCD and ICAPCD have submitted SIP revisions to the Agency that are fully approvable for the reasons outlined in the 2017 proposal notice. As a result, EPA has determined that it is appropriate to take action to approve the EKAPCD and ICAPCD SIP revisions in accordance with applicable CAA requirements. Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). The commenter has pointed to no new alleged deficiency or other aspect that would lead the Agency to determine that the SIP revisions should be disapproved or that full approval of the SIP revisions is not otherwise appropriate.

As we recently reaffirmed in the 2021 Memorandum, EPA is implementing policy consistent with that outlined in the 2015 SSM SIP Action. That policy aligns with previous court decisions,

[4] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[5] 80 FR 33985.

including the D.C. Circuit's ruling in 2008, which found that inclusion of SSM exemptions in section 112 standards is not allowed under the CAA due to the generally applicable definition of emission limitations.[6] Additionally, in 2014 the D.C. Circuit vacated a provision in EPA regulations that allowed an affirmative defense if it met specific criteria. The court stated that EPA lacked authority to create such a defense because it would impermissibly encroach upon the authority of Federal courts to find liability or impose remedies.[7] It was in light of the 2008 and 2014 court cases, as well as concerns about the public health impacts of SSM, that led EPA in its 2015 action to clarify and update its SSM policy to explain that automatic exemptions, discretionary exemptions, overly broad enforcement discretion provisions, and affirmative defense provisions like the ones at issue in this action, will generally be viewed as inconsistent with CAA requirements.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act and for the reasons identified in the 2017 proposal, the EPA is fully approving the removal of these rules from the EKAPCD and ICAPCD portions of the California SIP. The Agency's final approval of this submission fully corrects the inadequacies in the EKAPCD and ICAPCD portions of the California SIP that were identified in the EPA's 2015 SSM SIP Action.

IV. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in section I of the preamble and as set forth below in the amendments to 40 CFR part 52, EPA is removing provisions from the Kern County and Imperial County portions of the California State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. The EPA has made and will continue to make the State Implementation Plan generally available through *www.regulations.gov* and at the EPA Region 9 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[6] *Sierra Club* v. *Johnson* 551 F.3d 1019 (D.C. Cir. 2008).

[7] *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 15, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(47)(iii)(C) and (c)(74)(i)(C) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(47) * * *

(iii) * * *

(C) Previously approved on October 24, 1980, in paragraph (c)(47)(i)(A) of this section and now deleted without replacement Rule 111, ''Equipment Breakdown.''

* * * * *

(74) * * *

(i) * * *

(C) Previously approved on January 27, 1981, in paragraph (c)(74)(i)(A) of this section and now deleted without replacement Rule 111, ''Equipment Breakdown.''

* * * * *

[FR Doc. 2022–17936 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2022–0124; FRL–9488–02–R10]

Air Plan Approval; OR; Oakridge $PM_{2.5}$ Redesignation to Attainment and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Oakridge, Oregon nonattainment area to attainment for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The EPA is also approving a maintenance plan for the area that demonstrates continued compliance with the $PM_{2.5}$ NAAQS through the year 2035, which Oregon submitted along with the redesignation request for inclusion into the Oregon State Implementation Plan (SIP). Additionally, the EPA finds adequate and is approving the $PM_{2.5}$ motor vehicle emission budgets for the area. Finally, the EPA is approving additional control measures, because incorporation of these measures will strengthen the Oregon SIP and ensure $PM_{2.5}$ emissions reductions in the Oakridge area. The EPA is taking these actions pursuant to the Clean Air Act (CAA or the Act).

DATES: This action is effective on September 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2022–0124. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski (15–H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, at (360) 753–9081, or *duboiski.christi@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' or ''our'' is used, it refers to the EPA.

I. Background

On January 13, 2022, Oregon submitted a request for the EPA to redesignate the Oakridge nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. On May 5, 2022, the EPA proposed to determine that the Oakridge, Oregon nonattainment area met the statutory requirements for redesignation under the CAA and proposed to approve, as a revision to the Oregon SIP, the State's plan for maintaining the 2006 24-hour $PM_{2.5}$ NAAQS through the year 2035 (87 FR 26710). The EPA's proposed approval was based upon the EPA's determination that the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS [1] and that all other redesignation criteria have been met for the area. In addition, in accordance with 40 CFR 93.118(f)(2), the EPA proposed to find adequate and approve the Oakridge 2015, 2025, 2030 and 2035 $PM_{2.5}$ motor vehicle emission budgets for use in transportation conformity determinations.

An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period closed on June 6, 2022. We received no public comments, therefore, we are finalizing the action as proposed.

[1] The EPA, 2020 Air Quality System (AQS) Design Value Report, AMP480, accessed July 26, 2022. The Design Value Report excludes measurements with regionally concurred exceptional event flags.

II. Final Action

The EPA is redesignating the Oakridge, Oregon $PM_{2.5}$ area to attainment and we are approving the associated maintenance plan as a revision to the Oregon SIP. The designation status of the Oakridge, Oregon $PM_{2.5}$ area under 40 CFR part 81 will be revised to attainment upon the effective date of this final action. We are also finding adequate and approving the $PM_{2.5}$ motor vehicle emission budgets included in the Oakridge maintenance plan.

In addition, the EPA is approving and incorporating by reference into the Oregon SIP, the submitted revisions to LRAPA Title 29 to reflect the Oakridge area's revised air quality designations, updated area names, and shift from the list of nonattainment areas to the list of maintenance areas; specifically, sections 29–0010, 29–0020, 29–0030, 29–0040, 29–0050, 29–0060, 29–0070, 29–0080, 29–0090, 29–0300, 29–0310 and 29–0320 (regulations governing the designation of air quality areas in Lane County, Oregon and their legal descriptions), State effective November 18, 2021.

Finally, the EPA is approving and incorporating into the SIP the Lane County Code Chapter 9—Restriction on Use of Solid Fuel Space Heating Devices, Sections 9.120–9.140 (regulating the use of solid fuel heating devices to reduce particulate emissions and improve air quality), and the City of Oakridge Ordinance No. 920—An Ordinance Amending Section 7 of Ordinance 914 and Adopting New Standards for the Oakridge Air Pollution Control Program; Section Two (3)—Solid Fuel Burning Devices—Prohibitions (prohibiting emissions from solid-fuel heating devices with an opacity greater than 20%). Upon the effective date of this action the SIP will contain the Oakridge Ordinance No. 920, city approved October 20, 2016 (except section 6) and the Lane County Code Chapter 9, county approved February 9, 2017 (except 9.145 and 9.150). Incorporation of these measures will strengthen the Oregon SIP and ensure $PM_{2.5}$ emission reductions in the Oakridge area.

We note, the EPA is taking separate and final action on the Oakridge PM_{10} redesignation request, and maintenance plan, which were also included in the January 13, 2022 submission.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the LRAPA regulatory provisions described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the EPA's approval of the final rule, and will be incorporated by reference in the next update to the SIP compilation.[2]

IV. Statutory and Executive Order Review

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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 the 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

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

Dated: August 12, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. Amend § 52.1970:
■ a. In paragraph (c):
■ i. Amend Table 3 by:
■ A. Revising the entry for ''City of Oakridge Ordinance No. 920''; and
■ B. Adding an entry for ''Lane County Code Chapter 9'' at the end of the table; and
■ ii. Amend Table 4 by revising the sections entitled ''Title 29—Designation of Air Quality Areas'' and ''Designation of Areas'' and footnote 1; and
■ b. In paragraph (e), amend Table 5 by adding, under the undesignated heading, ''Attainment and Maintenance Planning—Particulate Matter ($PM_{2.5}$)'' an entry for ''Oakridge $PM_{2.5}$ Maintenance Plan'' immediately after the entry for ''Updated $PM_{2.5}$ Attainment Plan''.

The revisions and additions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
*	*	*	*	*
City of Oakridge Ordinance No. 920.	An Ordinance Amending Section 7 of Ordinance 914 and Adopting New Standards for the Oakridge Air Pollution Control Program.	10/20/2016 (city approved).	8/22/2022, [INSERT **Federal Register** CITATION].	Except section 6.
Lane County Code Chapter 9.	Restriction on Use of Solid Fuel Space Heating Devices.	2/09/2017 (county approved).	8/22/2022, [INSERT **Federal Register** CITATION].	Except sections 9.145 and 9.150.

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR LANE COUNTY, OREGON [1]

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Title 29—Designation of Air Quality Areas				
29–0010	Definitions	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0020	Designation of Air Quality Control Regions	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0030	Designation of Nonattainment Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0040	Designation of Maintenance Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0050	Designation of Prevention of Significant Deterioration Areas.	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0060	Redesignation of Prevention of Significant Deterioration Areas.	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0070	Special Control Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0080	Motor Vehicle Inspection Boundary Designations.	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0090	Oxygenated Gasoline Control Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
Designation of Areas				
29–0300	Designation of Sustainment Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0310	Designation of Reattainment Areas	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
29–0320	Priority Sources	11/18/2021	8/22/2022, [INSERT **Federal Register** CITATION].	
*	*	*	*	*

[1] The EPA approves the requirements in Table 4 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Titles I of the CAA.

* * * * * (e) * * *

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	
Attainment and Maintenance Planning—Particulate Matter ($PM_{2.5}$)				

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	
Oakridge $PM_{2.5}$ Maintenance Plan.	Oakridge-Westfir	1/13/2022	8/22/2022, [INSERT **Federal Register** CITATION].	
* *	*	*	* *	*

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. In § 81.338, amend the table entitled ''Oregon—2006 24-Hour $PM_{2.5}$ NAAQS'' by revising the entry for ''Lane County (part)'' immediately after ''Oakridge, OR:'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
*	*	*	*	
Oakridge, OR:				
Lane County (part)	8/22/2022	Attainment.		
Boundary is defined as a line from Township 21 South, Range 2 East, Section 11 (northwest corner) east to Township 21 South, Range 3 East, Section 11 (northeast corner), south to Township 21 South, Range 3 East, Section 23 (southeast corner), west to Township 21 South, Range 2 East, Section 23 (southwest corner) connecting back to Township 21 South, Range 2 East, Section 11 (northwest corner).				
*	*	*	*	

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2022–17867 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2022–0125; FRL–9489–02–R10]

Air Plan Approval; OR; Oakridge PM_{10} Redesignation to Attainment and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Oakridge, Oregon nonattainment area to attainment for the 1987 National Ambient Air Quality Standard for particulate matter of 10 microns or less (PM_{10} NAAQS). The EPA is also approving a maintenance plan for the area that demonstrates continued compliance with the PM_{10} NAAQS through the year 2035, which Oregon submitted, along with the redesignation request, for inclusion into the Oregon State Implementation Plan (SIP). Additionally, the EPA finds adequate and is approving the PM_{10} motor vehicle emission budgets for the area. The EPA is taking these actions pursuant to the Clean Air Act (CAA or the Act).

DATES: This action is effective on September 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2022–0125. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski (15–H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, at (360) 753–9081, or *duboiski.christi@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' or ''our'' is used, it refers to the EPA.

I. Background

On January 13, 2022, Oregon submitted a request for the EPA to redesignate the Oakridge nonattainment area to attainment for the 1987 24-hour

PM_{10} NAAQS under section 107(d)(3)(E) of the CAA. On May 9, 2022, the EPA proposed to determine that the Oakridge, Oregon nonattainment area met the statutory requirements for redesignation under the CAA and proposed to approve, as a revision to the Oregon SIP, the State's plan for maintaining the 1987 24-hour PM_{10} NAAQS through the year 2035 (87 FR 27540). The EPA's proposed approval was based upon the EPA's determination that the area continues to attain the 1987 24-hour PM_{10} NAAQS [1] and that all other redesignation criteria have been met for the area. In addition, in accordance with 40 CFR 93.118(f)(2), the EPA proposed to find adequate and approve the Oakridge 2015, 2025, 2030 and 2035 PM_{10} motor vehicle emission budgets.

An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period closed on June 8, 2022. We received no public comments, therefore, we are finalizing the action as proposed.

II. Final Action

The EPA is redesignating the Oakridge, Oregon PM_{10} area to attainment and we are approving the associated maintenance plan as a revision to the Oregon SIP. The designation status of the Oakridge, Oregon PM_{10} area under 40 CFR part 81 will be revised to attainment upon the effective date of this final action. We are also finding adequate and approving the PM_{10} motor vehicle emission budgets included in the Oakridge maintenance plan.

Finally, the EPA is removing from the SIP and from incorporation by reference the outdated City of Oakridge Ordinance 815, city approved August 15, 1996, which restricts use of solid fuel space heating devices during air pollution episodes, because it has been superseded by the City of Oakridge Ordinance No. 920, approved by the EPA on February 08, 2018 (83 FR 5537).

We note, the EPA is taking a separate and final action on the Oakridge $PM_{2.5}$ redesignation request and maintenance plan, the Lane County Codes, the City of Oakridge Ordinance No. 920 and the LRAPA Title 29 rule revisions, which were also included in the January 13, 2022 submission.

[1] The EPA, 2020 Air Quality System (AQS) Design Value Report, AMP480, accessed July 26, 2022. The Design Value Report excludes measurements with regionally concurred exceptional event flags.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. As described in section II of this preamble, the EPA is removing City of Oakridge Ordinance 815, which is outdated. This material has been approved by the EPA for exclusion from the SIP as of the effective date of EPA's approval of the final rule. The EPA has made, and will continue to make, incorporation by reference materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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 the 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

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

Dated: August 12, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. In § 52.1970:

a. In paragraph (c), amend Table 3 by removing the entry ''City of Oakridge Ordinance 815''; and

■ b. In paragraph (e), amend Table 5 under the heading ''Attainment and Maintenance Planning—Particulate Matter (PM_{10})'' by adding an entry for ''Oakridge PM_{10} Maintenance Plan'' immediately following the entry for ''PM_{10} 2nd 10-year Limited Maintenance Plan''.

The addition reads as follows:

§ 52.1970 Identification of plan.

* * * * *

(e) * * *

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
Attainment and Maintenance Planning—Particulate Matter (PM_{10})				
*	*	*	*	*
Oakridge PM_{10} Maintenance Plan.	Oakridge	1/13/2022	8/22/2022, [INSERT **Federal Register** CITATION].	
*	*	*	*	*

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. In § 81.338 amend the table entitled ''Oregon—PM–10'' by revising the entry for ''Oakridge (the Urban Growth Boundary area)'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
Oakridge (the Urban Growth Boundary area)	8/22/2022	Attainment		
*	*	*	*	*

* * * * *

[FR Doc. 2022–17866 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 76

[GN Docket No. 17–142, FCC 22–12, FRID 101044]

Improving Competitive Broadband Access to Multiple Tenant Environments

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, a disclosure requirement associated with the Commission's *2022 Multiple Tenant Environments (MTE) Order,* FCC 22–12, in which the Commission, among other actions, required disclosure of certain exclusive marketing agreements on written marketing materials directed at tenants or prospective tenants of a multiple tenant environment. This document is consistent with the *2022 MTE Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the compliance date of these rules.

DATES: Effective: This rule is effective August 22, 2022.

Compliance dates: Compliance for new contracts under §§ 64.2500(e) and 47 CFR 76.2000(d) is required as of August 22, 2022. Compliance for existing contracts under §§ 64.2500(e) and 76.2000(d) is required as of September 26, 2022.

FOR FURTHER INFORMATION CONTACT: Jesse Goodwin, Competition Policy Division, Wireline Competition Bureau,

(202) 418–0958, or email *Benjamin.Goodwin@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 25, 2022, OMB approved, for a period of three years, the information collection requirements relating to §§ 64.2500 and 76.2000 of the Commission's rules, as contained in the Commission's *2022 MTE Order,* FCC 22–12, published at 87 FR 17181 on March 28, 2022. The OMB Control Number is 3060–1305.

The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20002. Please include the OMB Control Number, 3060–1305, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 25, 2022 for the information collection requirements contained in the Commission's modifications to the Commission's rules in 47 CFR parts 64 and 76. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1305.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507. The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1305.

OMB Approval Date: July 25, 2022.

Expiration Date: July 31, 2025.

Title: Required Disclosure of Exclusive Marketing Arrangements in MTEs, Rule Sections 64.2500(e) and 76.2000(d).

Form Number: N/A.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 515 respondents; 24,000,000 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: Third-party disclosure requirement.

Total Annual Burden: 1,545 hours.

Total Annual Cost: No cost.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 201(b) and 628(b).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: In *Improving Competitive Broadband Access to Multiple Tenant Environments,* GN Docket No. 17–142, Report and Order and Declaratory Ruling, FCC 22–12 (Feb. 11, 2022), the Commission, among other things, adopted new rules requiring providers (common carriers and multichannel video programming distributors (MVPDs) subject to 47 U.S.C. 628(b)) to disclose the existence of exclusive marketing arrangements that they have with owners of multi-tenant premises (MTEs). An exclusive marketing arrangement is an arrangement, either written or in practice, between an MTE owner and a provider that gives the provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE. The required disclosure must be included on all written marketing material from the provider directed at tenants or prospective tenants of an MTE subject to the arrangement. The disclosure must explain in clear, conspicuous, legible, and visible language that the provider has the right to exclusively market its communications services to tenants in the MTE, that such a right does not suggest that the provider is the only entity that can provide communications services to tenants in the MTE, and that service from an alternative provider may be available. The purposes of the compelled disclosure are to remedy tenant confusion regarding the impact of exclusive marketing arrangements, prevent the evasion of our exclusive access rules, and, in turn, promote competition for communications services in MTEs.

List of Subjects

47 CFR Part 64

Communications common carriers, internet, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 76

Administrative practice and procedure, Communications, internet, Reporting and recordkeeping requirements, Satellite, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission amends parts 64 and 76 of title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.2500 by revising paragraphs (e)(2)(i) and (ii) to read as follows:

§ 64.2500 Prohibited agreements and required disclosures.

* * * * *

(e) * * *

(2) * * *

(i) *Compliance date for new contracts.* After August 22, 2022, a common carrier shall disclose the existence of any contract entered into on or after April 27, 2022, regarding the provision of communications service in a multiunit premise, written or oral, in which it receives the exclusive right to market its service to tenants of a multiunit premise.

(ii) *Compliance date for existing contracts.* After September 26, 2022, a common carrier shall disclose the existence of any contract in existence as of April 27, 2022, regarding the provision of communications service in a multiunit premise, written or oral, in which it receives the exclusive right to market its service to tenants of a multiunit premise.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 4. Amend § 76.2000 by revising paragraphs (d)(2)(i) and (d)(2)(ii) to read as follows:

§ 76.2000 Exclusive access to multiple dwelling units generally.

* * * * *

(d) * * *

(2) * * *

(i) *Compliance date for new contracts.* After August 22, 2022, a cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall disclose the existence of any contract regarding the provision of communications service in a MDU, written or oral, in which it receives the exclusive right to market its service to tenants of an MDU.

(ii) *Compliance date for existing contracts.* After September 26, 2022, a cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall disclose the existence of any contract regarding the provision of communications service in a MDU, written or oral, in which it receives the exclusive right to market its service to tenants of an MDU.

* * * * *

[FR Doc. 2022–17734 Filed 8–19–22; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 87, No. 161
Monday, August 22, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–SC–21–0076; SC21–981–1]

Almonds Grown in California; Modification of Regulations; Withdrawal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) withdraws a proposed rule recommended by the Almond Board of California (Board) that would have amended administrative requirements in the California Almond Marketing Order's (Order) roadside stand exemption, credit for market promotion activities, quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule proposed to stay two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers established under the Order. After reviewing and considering the comments received, the proposed rule is being withdrawn.

DATES: As of August 22, 2022, the proposed rule published on February 22, 2022, at 87 FR 6455, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Gary Olson, Regional Director, Western Region Field Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *PeterR.Sommers@usda.gov* or *GaryD.Olson@usda.gov.*

SUPPLEMENTARY INFORMATION: This withdrawal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of growers and handlers of almonds operating within the production area.

This action withdraws a proposed rule published in the **Federal Register** on February 22, 2022 (87 FR 6455), to revise several sections of the Order's administrative requirements. The proposed rule comment period was reopened to provide for an additional 15 days of public comment in a notice published in the **Federal Register** on June 22, 2022 (87 FR 37240). The proposed rule would have amended requirements in the Order's roadside stand exemption, credit for market promotion activities, quality control, exempt dispositions, and interest and late charges provisions. In addition, it proposed to stay two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers. The proposed changes were intended to modify the Order's requirements to reflect updates in industry practices and to facilitate the orderly administration of the Order.

During the proposed rule's initial 60-day comment period, four comments were received. All the comments may be viewed on the internet at *https://www.regulations.gov*. Of the comments received, two comments favored the proposed rule, one comment was neutral, and one was opposed. The comment opposed to the action was submitted by a large cooperative marketing association which also contained embedded comments from four individual growers. The opposing comments specifically objected to the proposed revision of § 981.441, credit for market promotion activities, including paid advertising. Further, the opposing comments questioned the Board's administrative process in recommending the proposed changes to AMS.

As a result of the comments received during the initial 60-day comment period, AMS decided to reopen the comment period for 15 days to allow for additional comments on the proposed amendments to the regulations. In the reopening announcement, AMS indicated that it is specifically looking for comments on provisions related to credit-back administrative requirements and further comment on perceived issues related to the formulation of the recommendations for that provision.

During the proposed rule's reopened 15-day comment period, AMS received 1,155 comments, after subtracting 19 duplicate comment submissions. All comments may be viewed on the internet at *https://www.regulations.gov.* Of the 1,155 comments received, roughly 98 percent (1,133) were opposed, 0.17 percent (2) were in support, and 1.9 percent (22) were either non-specific or non-substantive with regards to the merits of the proposal.

During the reopened comment period, commenters identified adverse effects anticipated to both consumers and producers if the proposal were effectuated. Approximately 93 percent of all comments cited the proposed rule's negative impact on the ability of consumers to buy raw almonds through e-commerce. They claimed the proposed rule, if effectuated, would prevent them from purchasing raw almonds online, directly from the almond producer. These commenters represent consumers of raw almonds located in California and across the United States in approximately 46 states, and Bermuda. Over half of all commenters reference the proposed changes to the Roadside stand exemption (§ 981.413) and Handler Definition (§ 981.13). These comments stated that the proposed changes in each section will likely prevent consumers from being able to access raw almonds from producers through direct e-commerce sales transactions. Almost 64 percent described the disproportionate economic impact that the proposed rule would have on small growers. Some commenters expressed that they lacked notice of the rulemaking action altogether or described general dissatisfaction with the rulemaking process.

The two comments expressing support for the proposed rule were general. One commenter expressed support for excluding e-commerce under the roadside stand exemption. The second comment supported the proposed change and expressed concern that potentially unsafe products are being sold online in the open market.

After reviewing and considering all comments received during both public comment periods, AMS has determined that the proposed rule to modify

administrative requirements for almonds grown in California should be withdrawn. AMS intends to conduct outreach with California almond industry stakeholders on the concerns expressed during the public comment periods. Accordingly, the proposed rule to modify the administrative rules and regulations in the Order that published in the **Federal Register** on February 22, 2022, (87 FR 6455) is hereby withdrawn.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–17992 Filed 8–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1053; Project Identifier MCAI–2022–00200–T]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited 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 all BAE Systems (Operations) Limited Model BAe 146 series airplanes. This proposed AD was prompted by a finding that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated. This proposed AD would require modifying the autopilot engagement circuit. 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 October 6, 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 BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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–2022–1053; 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: Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@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–2022–1053; Project Identifier MCAI–2022–00200–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 Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@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

United Kingdom Civil Aviation Authority (U.K. CAA), which is the aviation authority for the United Kingdom, has issued U.K. CAA AD G–2022–0002, dated February 11, 2022 (U.K. CAA AD G–2022–0002) (also referred to after this as the MCAI), to correct an unsafe condition for all BAE Systems (Operations) Limited Model BAe 146 series airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–1053.

This proposed AD was prompted by a finding that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated. This finding was a result of a safety recommendation made by the United Kingdom's Air Accidents Investigation Branch (AAIB), after an incident on a

Saab AB, Support and Services Model SAAB 2000 airplane, for the European Union Aviation Safety Agency (EASA) to review autopilot system designs of aircraft certified under certain regulations, and if needed, require modifications to ensure that the autopilot does not create a potential unsafe condition when the flightcrew applies an override force to the flight controls. The FAA is proposing this AD to address continued autopilot engagement after flightcrew input to disengage of the autopilot, which could lead to reduced controllability of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021. This service information describes procedures for modifying the autopilot engagement circuit, including the wiring, relay, and certain module blocks. 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 20 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
130 work-hours × $85 per hour= $11,050	$2,124	$13,174	$263,480

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:

BAE Systems (Operations) Limited: Docket No. FAA–2022–1053; Project Identifier MCAI–2022–00200–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto-Flight.

(e) Unsafe Condition

This AD was prompted by a finding that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated. The FAA is issuing this AD to address continued autopilot engagement after flightcrew input to disengage the autopilot, which could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Modification

Within 12 months after the effective date of this AD, modify the autopilot engagement circuit in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021.

(h) No Reporting Requirement

Although BAE Systems (Operations) Limited Modification Service Bulletin SB.22–

072–36262A, dated September 14, 2021, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the United Kingdom Civil Aviation Authority (U.K. CAA); or BAE Systems (Operations) Limited's U.K. CAA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) U.K. CAA AD G–2022–0002, dated February 11, 2022, for related information. This MCAI may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–1053.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@faa.gov.*

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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 August 10, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–17985 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Trade Regulation Rule on Commercial Surveillance and Data Security

AGENCY: Federal Trade Commission.

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

SUMMARY: The Federal Trade Commission (''FTC'') is publishing this advance notice of proposed rulemaking (''ANPR'') to request public comment on the prevalence of commercial surveillance and data security practices that harm consumers. Specifically, the Commission invites comment on whether it should implement new trade regulation rules or other regulatory alternatives concerning the ways in which companies collect, aggregate, protect, use, analyze, and retain consumer data, as well as transfer, share, sell, or otherwise monetize that data in ways that are unfair or deceptive.

DATES:

Comments due date: Comments must be received on or before October 21, 2022.

Meeting date: The Public Forum will be held virtually on Thursday, September 8, 2022, from 2 p.m. until 7:30 p.m. Members of the public are invited to attend at the website *https://www.ftc.gov/news-events/events/2022/09/commercial-surveillance-data-security-anpr-public-forum.*

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Commercial Surveillance ANPR, R111004'' on your comment, and file your comment online at *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Trilling, 202–326–3497; Peder Magee, 202–326–3538; Olivier Sylvain, 202–326–3046; or *commercialsurveillancerm@ftc.gov.*

I. Overview

Whether they know it or not, most Americans today surrender their personal information to engage in the most basic aspects of modern life. When they buy groceries, do homework, or apply for car insurance, for example, consumers today likely give a wide range of personal information about themselves to companies, including their movements,[1] prayers,[2] friends,[3] menstrual cycles,[4] web-browsing,[5] and faces,[6] among other basic aspects of their lives.

Companies, meanwhile, develop and market products and services to collect and monetize this data. An elaborate and lucrative market for the collection,

[1] *See, e.g.,* Press Release, Fed. Trade Comm'n, Mobile Advertising Network InMobi Settles FTC Charges It Tracked Hundreds of Millions of Consumers' Locations Without Permission (June 22, 2016), *https://www.ftc.gov/news-events/press-releases/2016/06/mobile-advertising-network-inmobi-settles-ftc-charges-it-tracked. See also* Stuart A. Thompson & Charlie Warzel, *Twelve Million Phones, One Dataset, Zero Privacy,* N.Y. Times (Dec. 19, 2019), *https://www.nytimes.com/interactive/2019/12/19/opinion/location-tracking-cell-phone.html;* Jon Keegan & Alfred Ng, *There's a Multibillion-Dollar Market for Your Phone's Location Data,* The Markup (Sept. 30, 2021), *https://themarkup.org/privacy/2021/09/30/theres-a-multibillion-dollar-market-for-your-phones-location-data;* Ryan Nakashima, *AP Exclusive: Google Tracks Your Movements, Like It or Not,* Associated Press (Aug. 13, 2018), *https://apnews.com/article/north-america-science-technology-business-ap-top-news-828aefab64d4411bac257a07c1af0ecb.*

[2] *See, e.g.,* Joseph Cox, *How the U.S. Military Buys Location Data from Ordinary Apps,* Motherboard (Nov. 16, 2020), *https://www.vice.com/en/article/jgqm5x/us-military-location-data-xmode-locate-x.*

[3] *See, e.g.,* Press Release, Fed. Trade Comm'n, Path Social Networking App Settles FTC Charges It Deceived Consumers and Improperly Collected Personal Information from Users' Mobile Address Books (Feb. 1, 2013), *https://www.ftc.gov/news-events/press-releases/2013/02/path-social-networking-app-settles-ftc-charges-it-deceived.*

[4] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Finalizes Order with Flo Health, a Fertility-Tracking App that Shared Sensitive Health Data with Facebook, Google, and Others (June 22, 2021), *https://www.ftc.gov/news-events/press-releases/2021/06/ftc-finalizes-order-flo-health-fertility-tracking-app-shared.*

[5] *See, e.g.,* Fed. Trade Comm'n, *A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major internet Service Providers: An FTC Staff Report* (Oct. 21, 2021), *https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf.*

[6] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Finalizes Settlement with Photo App Developer Related to Misuse of Facial Recognition Technology (May 7, 2021), *https://www.ftc.gov/news-events/press-releases/2021/05/ftc-finalizes-settlement-photo-app-developer-related-misuse. See also* Tom Simonite, *Face Recognition Is Being Banned—but It's Still Everywhere,* Wired (Dec. 22, 2021), *https://www.wired.com/story/face-recognition-banned-but-everywhere/.*

retention, aggregation, analysis, and onward disclosure of consumer data incentivizes many of the services and products on which people have come to rely. Businesses reportedly use this information to target services—namely, to set prices,[7] curate newsfeeds,[8] serve advertisements,[9] and conduct research on people's behavior,[10] among other things. While, in theory, these personalization practices have the potential to benefit consumers, reports note that they have facilitated consumer harms that can be difficult if not impossible for any one person to avoid.[11]

Some companies, moreover, reportedly claim to collect consumer data for one stated purpose but then also use it for other purposes.[12] Many such firms, for example, sell or otherwise monetize such information or compilations of it in their dealings with advertisers, data brokers, and other third parties.[13] These practices also appear to exist outside of the retail consumer setting. Some employers, for example, reportedly collect an assortment of worker data to evaluate productivity, among other reasons [14]—a practice that has become far more pervasive since the onset of the COVID–19 pandemic.[15]

Many companies engage in these practices pursuant to the ostensible consent that they obtain from their consumers.[16] But, as networked devices and online services become essential to navigating daily life, consumers may have little choice but to accept the terms that firms offer.[17] Reports suggest that consumers have become resigned to the ways in which companies collect and monetize their information, largely because consumers have little to no actual control over what happens to their information once companies collect it.[18]

In any event, the permissions that consumers give may not always be meaningful or informed. Studies have shown that most people do not generally understand the market for consumer data that operates beyond their monitors and displays.[19] Most consumers, for example, know little about the data brokers and third parties who collect and trade consumer data or build consumer profiles [20] that can expose intimate details about their lives and, in the wrong hands, could expose unsuspecting people to future harm.[21]

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[7] *See, e.g.,* Casey Bond, *Target Is Tracking You and Changing Prices Based on Your Location,* Huffington Post (Feb. 24, 2022), *https://www.huffpost.com/entry/target-tracking-location-changing-prices_l_603fd12bc5b6ff75ac410a38;* Maddy Varner & Aaron Sankin, *Suckers List: How Allstate's Secret Auto Insurance Algorithm Squeezes Big Spenders,* The MarkUp (Feb. 25, 2020), *https://themarkup.org/allstates-algorithm/2020/02/25/car-insurance-suckers-list. See generally* Executive Office of the President of the United States, *Big Data and Differential Pricing,* at 2, 12–13 (Feb. 2015), *https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/docs/Big_Data_Report_Nonembargo_v2.pdf.*

[8] *See, e.g.,* Will Oremus et al., *Facebook under fire: How Facebook shapes your feed: The evolution of what posts get top billing on users' news feeds, and what gets obscured,* Wash. Post (Oct. 26, 2021), *https://www.washingtonpost.com/technology/interactive/2021/how-facebook-algorithm-works/.*

[9] *See, e.g.,* Nat Ives, *Facebook Ad Campaign Promotes Personalized Advertising,* Wall. St. J. (Feb. 25, 2021), *https://www.wsj.com/articles/facebook-ad-campaign-promotes-personalized-advertising-11614261617.*

[10] *See, e.g.,* Elise Hu, *Facebook Manipulates Our Moods for Science and Commerce: A Roundup,* NPR (June 30, 2014), *https://www.npr.org/sections/alltechconsidered/2014/06/30/326929138/facebook-manipulates-our-moods-for-science-and-commerce-a-roundup.*

[11] *See, e.g.,* Matthew Hindman et al., *Facebook Has a Superuser-Supremacy Problem,* The Atlantic (Feb. 10, 2022), *https://www.theatlantic.com/technology/archive/2022/02/facebook-hate-speech-misinformation-superusers/621617/;* Consumer Protection Data Spotlight, Fed. Trade Comm'n, *Social Media a Gold Mine for Scammers in 2021* (Jan. 25, 2022), *https://www.ftc.gov/news-events/blogs/data-spotlight/2022/01/social-media-gold-mine-scammers-2021;* Jonathan Stempel, *Facebook Sued for Age, Gender Bias in Financial Services Ads,* Reuters (Oct. 31, 2019), *https://www.reuters.com/article/us-facebook-lawsuit-bias/facebook-sued-for-age-gender-bias-in-financial-services-ads-idUSKBN1XA2G8;* Karen Hao, *Facebook's Ad Algorithms Are Still Excluding Women from Seeing Jobs,* MIT Tech. Rev. (Apr. 9, 2021), *https://www.technologyreview.com/2021/04/09/1022217/facebook-ad-algorithm-sex-discrimination;* Corin Faife & Alfred Ng, *Credit Card Ads Were Targeted by Age, Violating Facebook's Anti-Discrimination Policy,* The MarkUp (Apr. 29, 2021), *https://themarkup.org/citizen-browser/2021/04/29/credit-card-ads-were-targeted-by-age-violating-facebooks-anti-discrimination-policy.* Targeted behavioral advertising is not the only way in which internet companies automate advertising at scale. Researchers have found that contextual advertising may be as cost-effective as targeting, if not more so. *See, e.g.,* Keach Hagey, *Behavioral Ad Targeting Not Paying Off for Publishers, Study Suggests,* Wall St. J. (May 29, 2019), *https://www.wsj.com/articles/behavioral-ad-targeting-not-paying-off-for-publishers-study-suggests-11559167195* (discussing Veronica Marotta et al., *Online Tracking and Publishers' Revenues: An Empirical Analysis* (2019), *https://weis2019.econinfosec.org/wp-content/uploads/sites/6/2019/05/WEIS_2019_paper_38.pdf*).

[12] *See, e.g.,* Drew Harvell, *Is Your Pregnancy App Sharing Your Intimate Data with Your Boss?,* Wash. Post (Apr. 10, 2019), *https://www.washingtonpost.com/technology/2019/04/10/tracking-your-pregnancy-an-app-may-be-more-public-than-you-think/;* Jon Keegan & Alfred Ng, *The Popular Family Safety App Life360 Is Selling Precise Location Data on Its Tens of Millions of Users,* The MarkUp (Dec. 6, 2021), *https://themarkup.org/privacy/2021/12/06/the-popular-family-safety-app-life360-is-selling-precise-location-data-on-its-tens-of-millions-of-user.*

[13] *See, e.g.,* Fed. Trade Comm'n, *Data Brokers: A Call for Transparency and Accountability* (May 2014), *https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf. See also, e.g.,* Press Release, Fed. Trade Comm'n, FTC Puts an End to Data Broker Operation that Helped Scam More Than $7 Million from Consumers' Accounts (Nov. 30, 2016), *https://www.ftc.gov/news-events/press-releases/2016/11/ftc-puts-end-data-broker-operation-helped-scam-more-7-million;* Press Release, Fed. Trade Comm'n, Data Broker Defendants Settle FTC Charges They Sold Sensitive Personal Information to Scammers (Feb. 18, 2016), *https://www.ftc.gov/news-events/press-releases/2016/02/data-broker-defendants-settle-ftc-charges-they-sold-sensitive.*

[14] *See, e.g.,* Drew Harwell, *Contract Lawyers Face a Growing Invasion of Surveillance Programs That Monitor Their Work,* Wash. Post (Nov. 11, 2021), *https://www.washingtonpost.com/technology/2021/11/11/lawyer-facial-recognition-monitoring/;* Annie Palmer, *Amazon Is Rolling Out Cameras That Can Detect If Warehouse Workers Are Following Social Distancing Rules,* CNBC (June 16, 2020), *https://www.cnbc.com/2020/06/16/amazon-using-cameras-to-enforce-social-distancing-rules-at-warehouses.html;* Sarah Krouse, *How Google Spies on Its Employees,* The Information (Sept. 23, 2021), *https://www.theinformation.com/articles/how-google-spies-on-its-employees;* Adam Satariano, *How My Boss Monitors Me While I Work From Home,* N.Y. Times (May 6, 2020), *https://www.nytimes.com/2020/05/06/technology/employee-monitoring-work-from-home-virus.html.*

[15] *See, e.g.,* Danielle Abril & Drew Harwell, *Keystroke tracking, screenshots, and facial recognition: The box may be watching long after the pandemic ends,* Wash. Post (Sept. 24, 2021), *https://www.washingtonpost.com/technology/2021/09/24/remote-work-from-home-surveillance/.*

[16] *See* Tr. of FTC Hr'g, *The FTC's Approach to Consumer Privacy* (Apr. 9, 2019), at 50, *https://www.ftc.gov/system/files/documents/public_events/1418273/ftc_hearings_session_12_transcript_day_1_4-9-19.pdf* (remarks of Paul Ohm). *See also* Fed. Trade Comm'n, *Privacy Online: Fair Information Practices in the Electronic Marketplace: A Report to Congress* 26 (May 2000), *https://www.ftc.gov/sites/default/files/documents/reports/privacy-online-fair-information-practices-electronic-marketplace-federal-trade-commission-report/privacy2000.pdf.*

[17] *See* Tr. of FTC Hr'g, *The FTC's Approach to Consumer Privacy* (Apr. 10, 2019), at 129, *https://www.ftc.gov/system/files/documents/public_events/1418273/ftc_hearings_session_12_transcript_day_2_4-10-19.pdf* (remarks of FTC Commissioner Rebecca Kelly Slaughter, describing privacy consent as illusory because consumers often have no choice other than to consent in order to reach digital services that have become necessary for participation in contemporary society).

[18] *See* Joe Nocera, *How Cookie Banners Backfired,* N.Y. Times (Jan. 29, 2022), *https://www.nytimes.com/2022/01/29/business/dealbook/how-cookie-banners-backfired.html* (discussing concept of ''digital resignation'' developed by Nora Draper and Joseph Turow). *See also* Nora A. Draper & Joseph Turow, *The Corporate Cultivation of Digital Resignation,* 21 New Media & Soc'y 1824–39 (2019).

[19] *See* Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent,* 96 Wash. U.L. Rev. 1461, 1477–78, 1498–1502 (2019); Daniel J. Solove, *Introduction: Privacy Self-Management and the Consent Dilemma,* 126 Harv. L. Rev. 1879, 1885–86 (2013) (''Solove Privacy Article'').

[20] *See generally* Fed. Trade Comm'n, *Data Brokers: A Call for Transparency and Accountability* (May 2014), *https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf.*

[21] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Puts an End to Data Broker Operation that Helped Scam More Than $7 Million from Consumers' Accounts (Nov. 30, 2016), *https://www.ftc.gov/news-events/press-releases/2016/11/ftc-puts-end-data-broker-operation-helped-scam-more-7-million;* Press Release, Fed. Trade Comm'n, Data Broker Defendants Settle FTC Charges They Sold Sensitive Personal Information to Scammers

Many privacy notices that acknowledge such risks are reportedly not readable to the average consumer.[22] Many consumers do not have the time to review lengthy privacy notices for each of their devices, applications, websites, or services,[23] let alone the periodic updates to them. If consumers do not have meaningful access to this information, they cannot make informed decisions about the costs and benefits of using different services.[24]

This information asymmetry between companies and consumer runs even deeper. Companies can use the information that they collect to direct consumers' online experiences in ways that are rarely apparent—and in ways that go well beyond merely providing the products or services for which consumers believe they sign up.[25] The Commission's enforcement actions have targeted several pernicious dark pattern practices, including burying privacy settings behind multiple layers of the user interface [26] and making misleading representations to ''trick or trap'' consumers into providing personal information.[27] In other instances, firms may misrepresent or fail to communicate clearly how they use and protect people's data.[28] Given the reported scale and pervasiveness of such practices, individual consumer consent may be irrelevant.

The material harms of these commercial surveillance practices may be substantial, moreover, given that they may increase the risks of cyberattack by hackers, data thieves, and other bad actors. Companies' lax data security practices may impose enormous financial and human costs. Fraud and identity theft cost both businesses and consumers billions of dollars, and consumer complaints are on the rise.[29] For some kinds of fraud, consumers have historically spent an average of 60 hours *per victim* trying to resolve the issue.[30] Even the nation's critical infrastructure is at stake, as evidenced by the recent attacks on the largest fuel pipeline,[31] meatpacking plants,[32] and water treatment facilities [33] in the United States.

Companies' collection and use of data have significant consequences for consumers' wallets, safety, and mental health. Sophisticated digital advertising systems reportedly automate the targeting of fraudulent products and services to the most vulnerable consumers.[34] Stalking apps continue to endanger people.[35] Children and teenagers remain vulnerable to cyber bullying, cyberstalking, and the distribution of child sexual abuse material.[36] Peer-reviewed research has linked social media use with depression, anxiety, eating disorders, and suicidal ideation among kids and teens.[37]

Finally, companies' growing reliance on automated systems is creating new

(Feb. 18, 2016), *https://www.ftc.gov/news-events/press-releases/2016/02/data-broker-defendants-settle-ftc-charges-they-sold-sensitive; FTC* v. *Accusearch,* 570 F.3d 1187, 1199 (10th Cir. 2009). *See also* Molly Olmstead, *A Prominent Priest Was Outed for Using Grindr. Experts Say It's a Warning Sign,* Slate (July 21, 2021), *https://slate.com/technology/2021/07/catholic-priest-grindr-data-privacy.html.*

[22] *See* Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Res. Ctr. (Nov. 15, 2019), *https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/. See also* Solove Privacy Article, 126 Harv. L. Rev. at 1885; Aleecia M. McDonald & Lorrie Faith Cranor, *The Cost of Reading Privacy Policies,* 4 I/S J. of L. & Pol'y for Info. Society 543 (2008); Irene Pollach, *What's Wrong with Online Privacy Policies?,* 50 Comm's ACM 103 (2007).

[23] Kevin Litman-Navarro, *We Read 150 Privacy Policies. They Were an Incomprehensible Disaster,* N.Y. Times (2019), *https://www.nytimes.com/interactive/2019/06/12/opinion/facebook-google-privacy-policies.html;* Alexis C. Madrigal, *Reading the Privacy Policies You Encounter in a Year Would Take 76 Work Days,* The Atlantic (Mar. 1, 2012), *https://www.theatlantic.com/technology/archive/2012/03/reading-theprivacy-policies-you-encounter-in-a-year-would-take-76-work-days/253851/. See also* FTC Comm'r Rebecca Kelly Slaughter, *Wait But Why? Rethinking Assumptions About Surveillance Advertising: IAPP Privacy Security Risk Closing Keynote* (''Slaughter Keynote'') (Oct. 22, 2021), at 4, *https://www.ftc.gov/system/files/documents/public_statements/1597998/iapp_psr_2021_102221_final2.pdf.*

[24] *See* FTC Comm'r Christine S. Wilson, *A Defining Moment for Privacy: The Time is Ripe for Federal Privacy Legislation,* Remarks at the Future of Privacy Forum (Feb. 6, 2020), *https://www.ftc.gov/news-events/news/speeches/remarks-commissioner-christine-s-wilson-future-privacy-forum.*

[25] *See generally* Ryan Calo & Alex Rosenblat, *The Taking Economy: Uber, Information, and Power,* 117 Colum. L. Rev. 1623 (2017); Ryan Calo, *Digital Market Manipulation,* 82 Geo. Wash. L. Rev. 995 (2014).

[26] *See* Press Release, Fed. Trade Comm'n, Facebook Settles FTC Charges That It Deceived Consumers by Failing to Keep Privacy Promises (Nov. 29, 2011), *https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep.*

[27] *See* Press Release, Fed. Trade Comm'n, FTC Takes Action against the Operators of Copycat Military websites (Sept. 6, 2018), *https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites.*

[28] *See generally infra* Item III(a).

[29] Press Release, Fed. Trade Comm'n, New Data Shows FTC Received 2.8 Million Fraud Reports from Consumers in 2021 (Feb. 22, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0.*

[30] Fed. Trade Comm'n, *Identity Theft Survey Report* (Sept. 2003), *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-identity-theft-program/synovatereport.pdf.*

[31] William Turton & Kartikay Mehrotra, *Hackers Breached Colonial Pipeline Using Compromised Password,* Bloomberg (June 4, 2021), *https://www.bloomberg.com/news/articles/2021-06-04/hackers-breached-colonial-pipeline-using-compromised-password.*

[32] Dan Charles, *The Food Industry May Be Finally Paying Attention To Its Weakness To Cyberattacks,* NPR (July 5, 2021), *https://www.npr.org/2021/07/05/1011700976/the-food-industry-may-be-finally-paying-attention-to-its-weakness-to-cyberattack.*

[33] Josh Margolin & Ivan Pereira, *Outdated Computer System Exploited in Florida Water Treatment Plant Hack,* ABC News (Feb. 11, 2021), *https://abcnews.go.com/US/outdated-computer-system-exploited-florida-water-treatment-plant/story?id=75805550.*

[34] *See, e.g.,* Zeke Faux, *How Facebook Helps Shady Advertisers Pollute the internet,* Bloomberg (Mar. 27, 2019), *https://www.bloomberg.com/news/features/2018-03-27/ad-scammers-need-suckers-and-facebook-helps-find-them* (noting an affiliate marketer's claim that Facebook's ad system ''find[s] the morons for me'').

[35] *See* Consumer Advice, Fed. Trade Comm'n, *Stalking Apps: What to Know* (May 2021), *https://consumer.ftc.gov/articles/stalking-apps-what-know.*

[36] *See* Ellen M. Selkie, Jessica L. Fales, & Megan A. Moreno, *Cyberbullying Prevalence Among U.S. Middle and High School-Aged Adolescents: A Systematic Review and Quality Assessment,* 58 J. Adolescent Health 125 (2016); Fed. Trade Comm'n, *Parental Advisory: Dating Apps* (May 6, 2019), *https://consumer.ftc.gov/consumer-alerts/2019/05/parental-advisory-dating-apps;* Subcommittee on Consumer Protection, Product Safety, and Data Security, U.S. Senate Comm. on Com., Sci. & Transp., Hearing, *Protecting Kids Online: internet Privacy and Manipulative Marketing* (May 18, 2021), *https://www.commerce.senate.gov/2021/5/protecting-kids-online-internet-privacy-and-manipulative-marketing; Aisha Counts, Child Sexual Abuse Is Exploding Online. Tech's Best Defenses Are No Match., Protocol (Nov. 12, 2021), https://www.protocol.com/policy/csam-child-safety-online.*

[37] *See, e.g.,* Elroy Boers et al., *Association of Screen Time and Depression in Adolescence,* 173 JAMA Pediatr. 9 (2019) at 857 (''We found that high mean levels of social media over 4 years and any further increase in social media use in the same year were associated with increased depression.''); Hugues Sampasa-Kanyinga & Rosamund F. Lewis, *Frequent Use of Social Networking Sites Is Associated with Poor Psychological Functioning Among Children and Adolescents,* 18 Cyberpsychology, Behavior, and Social Networking 7 (2015) at 380 (''Daily [social networking site] use of more than 2 hours was . . . independently associated with poor self-rating of mental health and experiences of high levels of psychological distress and suicidal ideation.''); Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time,* 6 Clinical Psychological Sci. 1 (2018) at 11 (''[A]dolescents using social media sites every day were 13% more likely to report high levels of depressive symptoms than those using social media less often.''); H.C. Woods & H. Scott, *#Sleepyteens: Social Media Use in Adolescence is Associated with Poor Sleep Quality, Anxiety, Depression, and Low Self-Esteem,* 51 J. of Adolescence 41–9 (2016) at 1 (''Adolescents who used social media more . . . experienced poorer sleep quality, lower self-esteem and higher levels of anxiety and depression.''); Simon M. Wilksch et al., *The relationship between social media use and disordered eating in young adolescents,* 53 Int'l J. of Eating Disorders 1 at 96 (''A clear pattern of association was found between [social media] usage and [disordered eating] cognitions.'').

forms and mechanisms for discrimination based on statutorily protected categories,[38] including in critical areas such as housing,[39] employment,[40] and healthcare.[41] For example, some employers' automated systems have reportedly learned to prefer men over women.[42] Meanwhile, a recent investigation suggested that lenders' use of educational attainment in credit underwriting might disadvantage students who attended historically Black colleges and universities.[43] And the Department of Justice recently settled its first case challenging algorithmic discrimination under the Fair Housing Act for a social media advertising delivery system that unlawfully discriminated based on protected categories.[44] Critically, these kinds of disparate outcomes may arise even when automated systems consider only *unprotected* consumer traits.[45]

The Commission is issuing this ANPR pursuant to Section 18 of the Federal Trade Commission Act (''FTC Act'') and the Commission's Rules of Practice [46] because recent Commission actions, news reporting, and public research suggest that harmful commercial surveillance and lax data security practices may be prevalent and increasingly unavoidable.[47] These developments suggest that trade regulation rules reflecting these current realities may be needed to ensure Americans are protected from unfair or deceptive acts or practices. New rules could also foster a greater sense of predictability for companies and consumers and minimize the uncertainty that case-by-case enforcement may engender.

Countries around the world and states across the nation have been alert to these concerns. Many accordingly have enacted laws and regulations that impose restrictions on companies' collection, use, analysis, retention, transfer, sharing, and sale or other monetization of consumer data. In recognition of the complexity and opacity of commercial surveillance practices today, such laws have reduced the emphasis on providing notice and obtaining consent and have instead stressed additional privacy ''defaults'' as well as increased accountability for businesses and restrictions on certain practices.

For example, European Union (''EU'') member countries enforce the EU's General Data Protection Regulation (''GDPR''),[48] which, among other things, limits the processing of personal data to six lawful bases and provides consumers with certain rights to access, delete, correct, and port such data. Canada's Personal Information Protection and Electronic Documents Act [49] and Brazil's General Law for the

[38] A few examples of where automated systems may have produced disparate outcomes include inaccuracies and delays in the delivery of child welfare services for the needy; music streaming services that are more likely to recommend men than women; gunshot detection software that mistakenly alerts local police when people light fireworks in majority-minority neighborhoods; search engine results that demean black women; and face recognition software that is more likely to misidentify dark-skinned women than light-skinned men. *See* Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification,* 81 Proc. of Mach. Learning Res. (2018); Latanya Sweeney, *Discrimination in Online Ad Delivery: Google Ads, Black Names and White Names, Racial Discrimination, and Click Advertising,* 11 Queue 10, 29 (Mar. 2013); Muhammad Ali et al., *Discrimination Through Optimization: How Facebook's Ad Delivery Can Lead to Skewed Outcomes,* 3 Proc. ACM on Hum.-Computer Interaction (2019); Virginia Eubanks, Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor (2018); Andres Ferraro, Xavier Serra, & Christine Bauer, *Break the Loop: Gender Imbalance in Music Recommenders,* CHIIR '21: Proceedings of the 2021 Conference on Human Information Interaction and Retrieval, 249–254 (Mar. 2021), *https://dl.acm.org/doi/proceedings/10.1145/3406522. See generally* Anita Allen, *Dismantling the ''Black Opticon'': Privacy, Race, Equity, and Online Data-Protection Reform,* 131 Yale L. J. Forum 907 (2022), *https://www.yalelawjournal.org/pdf/F7.AllenFinalDraftWEB_6f26iyu6.pdf;* Safiya Umoja Noble, Algorithms of Oppression: How Search Engines Reinforce Racism (2018); Danielle Citron, Hate Crimes in Cyberspace (2014).

[39] *See* Ny Magee, *Airbnb Algorithm Linked to Racial Disparities in Pricing,* The Grio (May 13, 2021), *https://thegrio.com/2021/05/13/airbnb-racial-disparities-in-pricing/;* Emmanuel Martinez & Lauren Kirchner, *The Secret Bias Hidden in Mortgage-Approval Algorithms,* ABC News & The MarkUp (Aug. 25, 2021), *https://abcnews.go.com/Business/wireStory/secret-bias-hidden-mortgage-approval-algorithms-79633917. See generally* Fed. Trade Comm'n, Accuracy in Consumer Reporting Workshop (Dec. 10, 2019), *https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop. See also* Alex P. Miller & Kartik Hosanagar, *How Targeted Ads and Dynamic Pricing Can Perpetuate Bias,* Harv. Bus. Rev. (Nov. 8, 2019), *https://hbr.org/2019/11/how-targeted-ads-and-dynamic-pricing-can-perpetuate-bias.*

[40] *See* Ifeoma Ajunwa, *The ''Black Box'' at Work,* Big Data & Society (Oct. 19, 2020), *https://journals.sagepub.com/doi/full/10.1177/2053951720938093.*

[41] *See* Donna M. Christensen et al., *Medical Algorithms are Failing Communities of Color,* Health Affs. (Sept. 9, 2021), *https://www.healthaffairs.org/do/10.1377/hblog20210903.976632/full/;* Heidi Ledford, *Millions of Black People Affected by Racial Bias in Health-Care Algorithms,* Nature (Oct. 24, 2019), *https://www.nature.com/articles/d41586-019-03228-6/.*

[42] Jeffrey Dastin, *Amazon scraps secret AI recruiting tool that showed bias against women,* Reuters (Oct. 10, 2018), *https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G;* Dave Gershgorn, *Companies are on the hook if their hiring algorithms are biased,* Quartz (Oct. 22, 2018), *https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased/.*

[43] Katherine Welbeck & Ben Kaufman, *Fintech Lenders' Responses to Senate Probe Heighten Fears of Educational Redlining,* Student Borrower Prot. Ctr. (July 31, 2020), *https://protectborrowers.org/fintech-lenders-response-to-senate-probe-heightens-fears-of-educational-redlining/.* This issue is currently being investigated by the company and outside parties. Relman Colfax, *Fair Lending Monitorship of Upstart Network's Lending Model, https://www.relmanlaw.com/cases-406.*

[44] Compl., *United States* v. *Meta Platforms, Inc.,* No. 22–05187 (S.D.N.Y. filed June 21, 2022), *https://www.justice.gov/usao-sdny/press-release/file/1514051/download;* Settlement Agreement, *United States* v. *Meta Platforms, Inc.,* No. 22–05187 (S.D.N.Y. filed June 21, 2022), *https://www.justice.gov/crt/case-document/file/1514126/download.*

[45] Andrew Selbst, *A New HUD Rule Would Effectively Encourage Discrimination by Algorithm,* Slate (Aug. 19, 2019), *https://slate.com/technology/2019/08/hud-disparate-impact-discrimination-algorithm.html. See also* Rebecca Kelly Slaughter, *Algorithms and Economic Justice,* 23 Yale J. L. & Tech. 1, 11–14 (2021) (''Slaughter Algorithms Paper''); Anupam Chander, *The Racist Algorithm?,* 115 Mich. L. Rev. 1023, 1029–30, 1037–39 (2017); Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact,* 104 Calif. L. Rev. 671, 677–87 (2016).

[46] 15 U.S.C. 57a; 16 CFR parts 0 and 1.

[47] In May 2022, three consumer advocacy groups urged the Commission to commence a rulemaking proceeding to protect ''privacy and civil rights.'' *See* Letter of Free Press, Access Now, and UltraViolet to Chair Lina M. Khan (May 12, 2022), *https://act.freepress.net/sign/protect_privacy_civil_rights.* Late in 2021, moreover, the Commission received a petition that calls on it to promulgate rules pursuant to its authority to protect against unfair methods of competition in the market for consumer data. *See* Press Release, Accountable Tech, Accountable Tech Petitions FTC to Ban Surveillance Advertising as an 'Unfair Method of Competition' (Sept. 28, 2021), *https://accountabletech.org/media/accountable-tech-petitions-ftc-to-ban-surveillance-advertising-as-an-unfair-method-of-competition/.* In accordance with the provision of its Rules of Practice concerning public petitions, 16 CFR 1.31, the Commission published a notice about the petition, 86 FR 73206 (Dec. 23, 2021), and accepted public comments, which are compiled at *https://www.regulations.gov/docket/FTC-2021-0070/comments.* The petitioner urges new rules that address the way in which certain dominant companies exploit their access to and control of consumer data. Those unfair-competition concerns overlap with some of the concerns in this ANPR about unfair or deceptive acts or practices, and several comments in support of the petition also urged the Commission to pursue a rulemaking using its authority to regulate unfair or deceptive practices. *See, e.g.,* Cmt. of Consumer Reports & Elec. Privacy Info. Ctr., at 2 (Jan. 27, 2022), *https://downloads.regulations.gov/FTC-2021-0070-0009/attachment_1.pdf.* Accordingly, Item IV, below, invites comment on the ways in which existing and emergent commercial surveillance practices harm competition and on any new trade regulation rules that would address such practices. Such rules could arise from the Commission's authority to protect against unfair methods of competition, so they may be proposed directly without first being subject of an advance notice of proposed rulemaking. *See* 15 U.S.C. 57a(a)(2) (Section 18's procedural requirements, including an ANPR, apply to rules defining unfair or deceptive acts or practices but expressly do not apply to rules ''with respect to unfair methods of competition'').

[48] *See Data Protection in the EU,* Eur. Comm'n, *https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en.*

[49] *See Personal Information Protection and Electronic Documents Act (PIPEDA),* Off. of the Privacy Comm'r of Can., *https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-*

Protection of Personal Data [50] contain some similar rights.[51] Laws in California,[52] Virginia, [53] Colorado,[54] Utah,[55] and Connecticut,[56] moreover, include some comparable rights, and numerous state legislatures are considering similar laws. Alabama,[57] Colorado,[58] and Illinois,[59] meanwhile, have enacted laws related to the development and use of artificial intelligence. Other states, including Illinois,[60] Texas,[61] and Washington,[62] have enacted laws governing the use of biometric data. All fifty U.S. states have laws that require businesses to notify consumers of certain breaches of consumers' data.[63] And numerous states require businesses to take reasonable steps to secure consumers' data.[64]

Through this ANPR, the Commission is beginning to consider the potential need for rules and requirements regarding commercial surveillance and lax data security practices. Section 18 of the FTC Act authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act.[65] Through this ANPR, the Commission aims to generate a public record about prevalent commercial surveillance practices or lax data security practices that are unfair or deceptive, as well as about efficient, effective, and adaptive regulatory responses. These comments will help to sharpen the Commission's enforcement work and may inform reform by Congress or other policymakers, even if the Commission does not ultimately promulgate new trade regulation rules.[66]

The term ''data security'' in this ANPR refers to breach risk mitigation, data management and retention, data minimization, and breach notification and disclosure practices.

For the purposes of this ANPR, ''commercial surveillance'' refers to the collection, aggregation, analysis, retention, transfer, or monetization of consumer data and the direct derivatives of that information. These data include both information that consumers actively provide—say, when they affirmatively register for a service or make a purchase—as well as personal identifiers and other information that companies collect, for example, when a consumer casually browses the web or opens an app. This latter category is far broader than the first.

The term ''consumer'' as used in this ANPR includes businesses and workers, not just individuals who buy or exchange data for retail goods and services. This approach is consistent with the Commission's longstanding practice of bringing enforcement actions against firms that harm companies [67] as well as workers of all kinds.[68] The FTC has frequently used Section 5 of the FTC Act to protect small businesses or individuals in contexts involving their employment or independent contractor status.[69]

This ANPR proceeds as follows. Item II outlines the Commission's existing authority to bring enforcement actions and promulgate trade regulation rules under the FTC Act. Item III sets out the wide range of actions against commercial surveillance and data security acts or practices that the Commission has pursued in recent years as well as the benefits and shortcomings of this case-by-case approach. Item IV sets out the questions on which the Commission seeks public comment. Finally, Item V provides instructions on the comment submission process, and Item VI describes a public forum that is scheduled to take place to facilitate public involvement in this rulemaking proceeding.

II. The Commission's Authority

Congress authorized the Commission to propose a rule defining unfair or

personal-information-protection-and-electronic-documents-act-pipeda/ (last modified Dec. 8, 2021).

[50] Brazilian General Data Protection Law (Law No. 13,709, of Aug. 14, 2018), *https://iapp.org/resources/article/brazilian-data-protection-law-lgpd-english-translation/.*

[51] In 2021, the European Commission also announced proposed legislation to create additional rules for artificial intelligence that would, among other things, impose particular documentation, transparency, data management, recordkeeping, security, assessment, notification, and registration requirements for certain artificial intelligence systems that pose high risks of causing consumer injury. *See Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts,* COM (2021) 206 final (Apr. 21, 2021), *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206.*

[52] *See* California Privacy Rights Act of 2020, Proposition 24 (Cal. 2020) (codified at Cal. Civ. Code 1798.100–199.100); State of Cal. Dep't of Just., *California Consumer Privacy Act (CCPA): Frequently Asked Questions (FAQs), https://oag.ca.gov/privacy/ccpa.*

[53] *See* Consumer Data Protection Act, S.B. 1392, 161st Gen. Assem. (Va. 2021) (codified at Va. Code Ann. 59.1–575 through 59.1–585 (2021)).

[54] *See* Protect Personal Data Privacy Act, 21 S.B. 190, 73 Gen. Assem. (Colo. 2021).

[55] *See* Utah Consumer Privacy Act, 2022 Utah Laws 462 (codified at Utah Code Ann. 13–61–1 through 13–61–4).

[56] *See* An Act Concerning Personal Data Privacy and Online Monitoring, 2022 Conn. Acts P.A. 22–15 (Reg. Sess.).

[57] *See* Act. No. 2021–344, S.B. 78, 2021 Leg., Reg. Sess., (Ala. 2021).

[58] *See* Restrict Insurers' Use of External Consumer Data Act, 21 S.B. 169, 73rd Gen. Assem., 1st Reg. Sess. (Colo. 2021).

[59] *See* Artificial Intelligence Video Interview Act, H.B. 53, 102nd Gen. Assem., Reg. Sess. (Ill. 2021) (codified at 820 Ill. Comp. Stat. Ann. 42/1 *et seq.*).

[60] *See* Biometric Information Privacy Act, S.B. 2400, 2008 Gen. Assem., Reg. Sess. (Ill. 2021) (codified at 740 Ill. Comp. Stat. Ann. 14/1 *et seq.*).

[61] *See* Tex. Bus. & Com. Code 503.001.

[62] *See* Wash. Rev. Code Ann. 19.375.010 through 19.375.900.

[63] *See* Nat'l Conf. of State Leg., *Security Breach Notification Laws* (Jan. 17, 2022), *https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx.*

[64] *See* Nat'l Conf. of State Leg., *Data Security Laws, Private Sector* (May 29, 2019), *https://www.ncsl.org/research/telecommunications-and-information-technology/data-security-laws.aspx.*

[65] 15 U.S.C. 45(a)(1).

[66] *Cf.* Slaughter Keynote at 4; Oral Statement of Comm'r Christine S. Wilson, *Strengthening the Federal Trade Commission's Authority to Protect Consumers: Hearing before the Senate Comm. on Com., Sci. & Transp.* (Apr. 20, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf.*

[67] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Obtains Contempt Ruling Against 'Yellow Pages' Scam (Nov. 25, 2015), *https://www.ftc.gov/news-events/press-releases/2015/11/ftc-obtains-contempt-ruling-against-yellow-pages-scam;* Press Release, Fed. Trade Comm'n, FTC and Florida Halt internet 'Yellow Pages' Scammers (July 17, 2014), *https://www.ftc.gov/news-events/press-releases/2014/07/ftc-florida-halt-internet-yellow-pages-scammers; In re Spiegel, Inc.,* 86 F.T.C. 425, 439 (1975). *See also FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244 (1972); *FTC* v. *Bunte Bros., Inc.,* 312 U.S. 349, 353 (1941); *In re Orkin Exterminating Co., Inc.,* 108 F.T.C. 263 (1986), *aff'd, Orkin Exterminating Co., Inc.* v. *FTC,* 849 F.2d 1354 (11th Cir. 1988); *FTC* v. *Datacom Mktg., Inc.,* No. 06-c-2574, 2006 WL 1472644, at *2 (N.D. Ill. May 24, 2006). Previously, the Commission included ''businessmen'' among those Congress charged it to protect under the statute. *See* Fed. Trade Comm'n, FTC Policy Statement on Unfairness (Dec. 17, 1980), appended to *In re Int'l Harvester Co.,* 104 F.T.C. 949, 1072 n.8 (1984), *https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness.*

[68] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Settles Charges Against Two Companies That Allegedly Failed to Protect Sensitive Employee Data (May 3, 2011), *https://www.ftc.gov/news-events/press-releases/2011/05/ftc-settles-charges-against-two-companies-allegedly-failed;* Press Release, Fed. Trade Comm'n, Rite Aid Settles FTC Charges That It Failed to Protect Medical and Financial Privacy of Customers and Employees (July 27, 2010), *https://www.ftc.gov/news-events/press-releases/2010/07/rite-aid-settles-ftc-charges-it-failed-protect-medical-financial;* Press Release, Fed. Trade Comm'n, CVS Caremark Settles FTC Charges: Failed to Protect Medical and Financial Privacy of Customers and Employees; CVS Pharmacy Also Pays $2.25 Million to Settle Allegations of HIPAA Violations (Feb. 18, 2009), *https://www.ftc.gov/news-events/press-releases/2009/02/cvs-caremark-settles-ftc-chargesfailed-protect-medical-financial. See also* Press Release, Fed. Trade Comm'n, Amazon To Pay $61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers (Feb. 2, 2021), *https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some.*

[69] *See, e.g., FTC* v. *IFC Credit Corp.,* 543 F. Supp. 2d 925, 934–41 (N.D. Ill. 2008) (holding that the FTC's construction of the term ''consumer'' to include businesses as well as individuals is reasonable and is supported by the text and history of the FTC Act).

deceptive acts or practices with specificity when the Commission ''has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' [70] A determination about prevalence can be made either on the basis of ''cease-and-desist'' orders regarding such acts or practices that the Commission has previously issued, or when it has ''any other information'' that ''indicates a widespread pattern of unfair or deceptive acts or practices.'' [71]

Generally, a practice is unfair under Section 5 if (1) it causes or is likely to cause substantial injury, (2) the injury is not reasonably avoidable by consumers, and (3) the injury is not outweighed by benefits to consumers or competition.[72] A representation, omission, or practice is deceptive under Section 5 if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers—that is, it would likely affect the consumer's conduct or decision with regard to a product or service.[73] Under the statute, this broad language is applied to specific commercial practices through Commission enforcement actions and the promulgation of trade regulation rules.

In addition to the FTC Act, the Commission enforces a number of sector-specific laws that relate to commercial surveillance practices, including: the Fair Credit Reporting Act,[74] which protects the privacy of consumer information collected by consumer reporting agencies; the Children's Online Privacy Protection Act (''COPPA''),[75] which protects information collected online from children under the age of 13; the Gramm-Leach-Bliley Act (''GLBA''),[76] which protects the privacy of customer information collected by financial institutions; the Controlling the Assault of Non-Solicited Pornography and Marketing (''CAN–SPAM'') Act,[77] which allows consumers to opt out of receiving commercial email messages; the Fair Debt Collection Practices Act,[78] which protects individuals from harassment by debt collectors and imposes disclosure requirements on related third-parties; the Telemarketing and Consumer Fraud and Abuse Prevention Act,[79] under which the Commission implemented the Do Not Call Registry; [80] the Health Breach Notification Rule,[81] which applies to certain health information; and the Equal Credit Opportunity Act,[82] which protects individuals from discrimination on the basis of race, color, religion, national origin, sex, marital status, receipt of public assistance, or good faith exercise of rights under the Consumer Credit Protection Act and requires creditors to provide to applicants, upon request, the reasons underlying decisions to deny credit.

III. The Commission's Current Approach to Privacy and Data Security

a. Case-By-Case Enforcement and General Policy Work

For more than two decades, the Commission has been the nation's privacy agency, engaging in policy work and bringing scores of enforcement actions concerning data privacy and security.[83] These actions have alleged that certain practices violate Section 5 of the FTC Act or other statutes to the extent they pose risks to physical security, cause economic or reputational injury, or involve unwanted intrusions into consumers' daily lives.[84] For example, the Commission has brought actions for:

- the surreptitious collection and sale of consumer phone records obtained through false pretenses; [85]
- the public posting of private health-related data online; [86]
- the sharing of private health-related data with third parties; [87]
- inaccurate tenant screening; [88]
- public disclosure of consumers' financial information in responses to consumers' critical online reviews of the publisher's services; [89]
- pre-installation of ad-injecting software that acted as a man-in-the-middle between consumers and all websites with which they communicated and collected and transmitted to the software developer consumers' internet browsing data; [90]
- solicitation and online publication of ''revenge porn''—intimate pictures and videos of ex-partners, along with their personal information—and the collection of fees to take down such information; [91]
- development and marketing of ''stalkerware'' that purchasers surreptitiously installed on others' phones or computers in order to monitor them; [92]

[70] 15 U.S.C. 57a(b)(3).

[71] *Id.*

[72] 15 U.S.C. 45(n).

[73] *See* FTC Policy Statement on Deception (Oct. 14, 1983), appended to *In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984), *https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.*

[74] 15 U.S.C. 1681 through 1681x.

[75] 15 U.S.C. 6501 through 6506.

[76] Public Law 106–102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.).

[77] 15 U.S.C. 7701 through 7713.

[78] 15 U.S.C. 1692 through 1692p.

[79] 15 U.S.C. 6101 through 6108.

[80] 16 CFR part 310.

[81] 16 CFR part 318.

[82] 15 U.S.C. 1691 through 1691f.

[83] ''Since 1995, the Commission has been at the forefront of the public debate on online privacy.'' Fed. Trade Comm'n, *Privacy Online: Fair Information Practices in the Electronic Marketplace—A Report to Congress* 3 (2000), *http://www.ftc.gov/reports/privacy2000/privacy2000.pdf* (third consecutive annual report to Congress after it urged the Commission to take on a greater role in policing privacy practices using Section 5 as the internet grew from a niche service to a mainstream utility). The first online privacy enforcement action came in 1998 against GeoCities, ''one of the most popular sites on the World Wide Web.'' Press Release, Fed. Trade Comm'n, internet Site Agrees to Settle FTC Charges of Deceptively Collecting Personal Information in Agency's First internet Privacy Case (Aug. 13, 1998), *http://www.ftc.gov/news-events/press-releases/1998/08/internet-site-agrees-settle-ftc-charges-deceptively-collecting.*

[84] *See* Fed. Trade Comm'n, *Comment to the National Telecommunications & Information Administration on Developing the Administration's Approach to Consumer Privacy,* No. 180821780–8780–01, 8–9 (Nov. 9, 2018), *https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developingadministrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf;* FTC Comm'r Christine S. Wilson, *A Defining Moment for Privacy: The Time Is Ripe for Federal Privacy Legislation: Remarks at the Future of Privacy Forum* 11, n.39 (Feb. 6, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1566337/commissioner_wilson_privacy_forum_speech_02-06-2020.pdf.*

[85] *See, e.g.,* Compl. for Injunctive and Other Equitable Relief, *United States* v. *Accusearch, Inc.,* No. 06–cv–105 (D. Wyo. filed May 1, 2006), *https://www.ftc.gov/sites/default/files/documents/cases/2006/05/060501accusearchcomplaint.pdf.*

[86] *See, e.g.,* Compl., *In re Practice Fusion, Inc.,* F.T.C. File No. 142–3039 (Aug. 16, 2016), *https://www.ftc.gov/system/files/documents/cases/160816practicefusioncmpt.pdf.*

[87] *See, e.g.,* Decision and Order, *In re Flo Health, Inc.,* FTC File No. 1923133 (June 22, 2021), *www.ftc.gov/system/files/documents/cases/192_3133_flo_health_decision_and_order.pdf.*

[88] *See, e.g.,* Compl. for Civ. Penalties, Permanent Injunction, and Other Equitable Relief, *United States* v. *AppFolio, Inc.,* No. 1:20-cv-03563 (D.D.C. filed Dec. 8, 2020), *https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf.*

[89] *See, e.g.,* Compl., *United States* v. *Mortg. Sols. FCS, Inc.,* No. 4:20–cv–00110 (N.D. Cal. filed Jan. 6, 2020), *https://www.ftc.gov/system/files/documents/cases/mortgage_solutions_complaint.pdf.*

[90] *See, e.g.,* Decision and Order, *In re Lenovo (United States) Inc.,* FTC File No. 152 3134 (Dec. 20, 2017), *https://www.ftc.gov/system/files/documents/cases/152_3134_c4636_lenovo_united_states_decision_and_order.pdf.*

[91] *See, e.g.,* Compl. for Permanent Injunction and Other Equitable Relief, *FTC and State of Nevada* v. *EMP Media, Inc.,* No. 2:18–cv–00035 (D. Nev. filed Jan. 9, 2018), *https://www.ftc.gov/system/files/documents/cases/1623052_myex_complaint_1-9-18.pdf;* Compl., *In re Craig Brittain,* F.T.C. File No. 132–3120 (Dec. 28, 2015), *https://www.ftc.gov/system/files/documents/cases/160108craigbrittaincmpt.pdf.*

[92] *See, e.g.,* Compl., *In re Support King, LLC,* F.T.C. File No. 192–3003 (Dec. 20, 2021), *https://www.ftc.gov/system/files/documents/cases/1923003c4756spyfonecomplaint_0.pdf;* Compl., *In re Retina-X Studios, LLC,* F.T.C. File No. 172–3118

• retroactive application of material privacy policy changes to personal information that businesses previously collected from users; [93]

• distribution of software that caused or was likely to cause consumers to unwittingly share their files publicly; [94]

• surreptitious activation of webcams in leased computers placed in consumers' homes; [95]

• sale of sensitive data such as Social Security numbers to third parties who did not have a legitimate business need for the information,[96] including known fraudsters; [97]

• collection and sharing of sensitive television-viewing information to target advertising contrary to reasonable expectations; [98]

• collection of phone numbers and email addresses to improve social media account security, but then deceptively using that data to allow companies to target advertisements in violation of an existing consent order; [99]

• failure to implement reasonable measures to protect consumers' personal information,[100] including Social Security numbers and answers to password reset questions,[101] and later covering up an ensuing breach; [102] and

• misrepresentations of the safeguards employed to protect data.[103]

This is just a sample of the Commission's enforcement work in data privacy and security.[104]

The orders that the Commission has obtained in these actions impose a variety of remedies, including prohibiting licensing, marketing, or selling of surveillance products,[105] requiring companies under order to implement comprehensive privacy and security programs and obtain periodic assessments of those programs by independent third parties,[106] requiring deletion of illegally obtained consumer information [107] or work product derived from that data,[108] requiring companies to provide notice to consumers affected by harmful practices that led to the action,[109] and mandating that companies improve the transparency of their data management practices.[110] The Commission may rely on these orders to seek to impose further sanctions on firms that repeat their unlawful practices.[111]

(Mar. 26, 2020), *https://www.ftc.gov/system/files/documents/cases/172_3118_retina-x_studios_complaint_0.pdf;* Compl. for Permanent Injunction and Other Equitable Relief, *FTC* v. *CyberSpy Software, LLC.,* No. 6:08–cv–01872 (M.D. Fla. filed Nov. 5, 2008), *https://www.ftc.gov/sites/default/files/documents/cases/2008/11/081105cyberspycmplt.pdf.*

[93] *See, e.g.,* Compl., *In re Facebook, Inc.,* F.T.C. File No. 092–3184 (July 27, 2012), *https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookcmpt.pdf;* Compl., *In re Gateway Learning Corp.,* F.T.C. File No. 042–3047 (Sept. 10, 2004), *https://www.ftc.gov/sites/default/files/documents/cases/2004/09/040917comp0423047.pdf.*

[94] *See, e.g.,* Compl. for Permanent Injunction and Other Equitable Relief, *FTC* v. *FrostWire LLC,* No. 1:11–cv–23643 (S.D. Fla. filed Oct. 7, 2011), *https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111011frostwirecmpt.pdf.*

[95] *See, e.g.,* Compl., *In re DesignerWare, LLC,* F.T.C. File No. 112–3151 (Apr. 11, 2013), *https://www.ftc.gov/sites/default/files/documents/cases/2013/04/130415designerwarecmpt.pdf;* Compl., *In re Aaron's, Inc.,* F.T.C. File No. 122–3264 (Mar. 10, 2014), *https://www.ftc.gov/system/files/documents/cases/140311aaronscmpt.pdf.*

[96] *See, e.g.,* Compl. for Permanent Injunction and Other Equitable Relief, *FTC* v. *Blue Global & Christopher Kay,* 2:17–cv–02117 (D. Ariz. filed July 3, 2017), *https://www.ftc.gov/system/files/documents/cases/ftc_v_blue_global_de01.pdf.*

[97] *See, e.g.,* Compl. for Permanent Injunction and Other Equitable Relief, *FTC* v. *Sequoia One, LLC,* Case No. 2:15–cv–01512 (D. Nev. filed Aug. 7, 2015), *https://www.ftc.gov/system/files/documents/cases/150812sequoiaonecmpt.pdf;* Compl. for Permanent Injunction and Other Equitable Relief, *FTC* v. *Sitesearch Corp.,* No. CV–14–02750–PHX–NVW (D. Ariz. filed Dec. 22, 2014), *https://www.ftc.gov/system/files/documents/cases/141223leaplabcmpt.pdf.*

[98] *See, e.g.,* Compl. for Permanent Injunction and Other Equitable and Monetary Relief, *FTC* v. *Vizio, Inc.,* No. 2:17–cv–00758 (D.N.J. filed Feb 6, 2017), *https://www.ftc.gov/system/files/documents/cases/170206_vizio_2017.02.06_complaint.pdf.*

[99] *See, e.g.,* Compl. for Civil Penalties, Permanent Injunction, Monetary Relief, and other Equitable Relief, *United States* v. *Twitter, Inc.,* Case No. 3:22–cv–3070 (N.D. Cal. filed May 25, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/2023062TwitterFiledComplaint.pdf.*

[100] *See, e.g.,* Compl., *In re InfoTrax Sys., L.C.,* F.T.C. File No. 162–3130 (Dec. 30, 2019), *https://www.ftc.gov/system/files/documents/cases/c-4696_162_3130_infotrax_complaint_clean.pdf;* Compl. for Permanent Injunction & Other Relief, *FTC* v. *Equifax, Inc.,* No. 1:19-mi-99999–UNA (N.D. Ga. filed July 22, 2019), *https://www.ftc.gov/system/files/documents/cases/172_3203_equifax_complaint_7-22-19.pdf;* First Amended Compl. for Injunctive and Other Relief, *FTC* v. *Wyndham Worldwide Corp.,* No. 2:12–01365 (D. Ariz. filed Aug. 9, 2012), *https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120809wyndhamcmpt.pdf.*

[101] *See, e.g.,* Compl., *In re Residual Pumpkin Entity, LLC,* F.T.C. File No. 1923209 (June 23, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/1923209CafePressComplaint.pdf.*

[102] *Id.*

[103] *See, e.g.,* Compl., *In re MoviePass, Inc.,* F.T.C. File No. 192–3000 (Oct. 1, 2021), *https://www.ftc.gov/system/files/documents/cases/1923000_-_moviepass_complaint_final.pdf;* Compl., *In re SkyMed Int'l, Inc.,* F.T.C. File No. 192–3140 (Jan. 26, 2021), *https://www.ftc.gov/system/files/documents/cases/c-4732_skymed_final_complaint.pdf;* Compl., *In re HTC Am., Inc.,* F.T.C. File No. 122–3049 (June 25, 2013), *https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130702htccmpt.pdf.*

[104] *See also, e.g.,* Compl., *In re Turn Inc.,* F.T.C. File No. 152–3099 (Apr. 6, 2017) (alleging that Respondent deceptively tracked consumers online and through their mobile applications for advertising purposes even after consumers took steps to opt out of such tracking), *https://www.ftc.gov/system/files/documents/cases/152_3099_c4612_turn_complaint.pdf;* Compl., *In re Epic Marketplace, Inc.,* F.T.C. File No. 112–3182 (Mar. 13, 2013) (alleging the Respondents deceptively collected for advertising purposes information about consumers' interest in sensitive medical and financial and other issues), *https://www.ftc.gov/sites/default/files/documents/cases/2013/03/130315epicmarketplacecmpt.pdf;* Compl., *In re ScanScout, Inc.,* F.T.C. File No. 102–3185 (Dec. 14, 2011) (alleging that Respondent deceptively used flash cookies to collect for advertising purposes the data of consumers who changed their web browser settings to block cookies), *https://www.ftc.gov/sites/default/files/documents/cases/2011/12/111221scanscoutcmpt.pdf;* Compl., *In re Chitika, Inc.,* F.T.C. File No. 102–3087 (June 7, 2011) (alleging that Respondent deceptively tracked consumers online for advertising purposes even after they opted out of online tracking on Respondent's website), *https://www.ftc.gov/sites/default/files/documents/cases/2011/06/110617chitikacmpt.pdf.*

[105] Decision and Order, *In re Support King, LLC,* F.T.C. File No. 192–3003 (Dec. 20, 2021), *https://www.ftc.gov/system/files/documents/cases/1923003c4756spyfoneorder.pdf.*

[106] *See, e.g.,* Decision and Order, *In re Zoom Video Commc'ns, Inc.,* F.T.C. File No. 192–3167 (Jan. 19, 2021), *https://www.ftc.gov/system/files/documents/cases/1923167_c-4731_zoom_final_order.pdf;* Decision and Order, *In re Tapplock,* F.T.C. File No. 192–3011 (May 18, 2020), *https://www.ftc.gov/system/files/documents/cases/1923011c4718tapplockorder.pdf;* Decision and Order, *In re Uber Techs., Inc.,* F.T.C. File No. 152–3054 (Oct. 25, 2018), *https://www.ftc.gov/system/files/documents/cases/152_3054_c-4662_uber_technologies_revised_decision_and_order.pdf.*

[107] Decision and Order, *In re Retina-X Studios,* F.T.C. File No. 172–3118 (Mar. 26, 2020), *https://www.ftc.gov/system/files/documents/cases/1723118retinaxorder_0.pdf;* Decision and Order, *In re PaymentsMD, LLC,* F.T.C. File No. 132–3088 (Jan. 27, 2015), *https://www.ftc.gov/system/files/documents/cases/150206paymentsmddo.pdf.*

[108] *See, e.g.,* Decision and Order, *In re Everalbum, Inc.,* F.T.C. File No. 192–3172 (May 6, 2021), *https://www.ftc.gov/system/files/documents/cases/1923172_-_everalbum_decision_final.pdf;* Final Order, *In re Cambridge Analytica, LLC,* F.T.C. File No. 182–3107 (Nov. 25, 2019), *https://www.ftc.gov/system/files/documents/cases/d09389_comm_final_orderpublic.pdf. See generally* Slaughter Algorithms Paper, 23 Yale J. L. & Tech. at 38–41 (discussing algorithmic disgorgement).

[109] *See, e.g.,* Decision and Order, *In re Flo Health, Inc.,* F.T.C. File No. 192–3133 (June 17, 2021), *https://www.ftc.gov/system/files/documents/cases/192_3133_flo_health_decision_and_order.pdf.*

[110] *See, e.g.,* Decision and Order, *In re Everalbum, Inc.,* F.T.C. File No. 192–3172 (May 6, 2021), *https://www.ftc.gov/system/files/documents/cases/1923172_-_everalbum_decision_final.pdf.*

[111] *See, e.g.,* Press Release, Fed. Trade Comm'n, FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads (May 25, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads;* Press Release, Fed. Trade Comm'n, FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook (July 24, 2019), *https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions;* Press Release, Fed. Trade Comm'n, LifeLock to Pay $100 Million to Consumers to Settle FTC Charges it Violated 2010 Order (Dec. 17, 2015), *https://www.ftc.gov/news-events/press-releases/2015/12/lifelock-pay-100-million-consumers-settle-ftc-charges-it-violated;* Press Release, Fed. Trade Comm'n, Google Will Pay $22.5 Million to Settle FTC Charges it Misrepresented Privacy Assurances to Users of Apple's Safari internet Browser (Aug. 9, 2012), *https://www.ftc.gov/news-events/press-releases/2012/08/google-will-pay-225-million-settle-ftc-charges-it-misrepresented;* Press Release, Fed. Trade

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The Commission has also engaged in broader policy work concerning data privacy and security. For example, it has promulgated rules pursuant to the sector-specific statutes enumerated above.[112] It also has published reports and closely monitored existing and emergent practices, including data brokers' activities,[113] ''dark patterns,'' [114] facial recognition,[115] Internet of Things,[116] big data,[117] cross-device tracking,[118] and mobile privacy disclosures.[119] The Commission, furthermore, has invoked its authority under Section 6(b) to require companies to prepare written reports or answer specific questions about their commercial practices.[120]

b. Reasons for Rulemaking

The Commission's extensive enforcement and policy work over the last couple of decades on consumer data privacy and security has raised important questions about the prevalence of harmful commercial surveillance and lax data security practices. This experience suggests that enforcement alone without rulemaking may be insufficient to protect consumers from significant harms. First, the FTC Act limits the remedies that the Commission may impose in enforcement actions on companies for violations of Section 5.[121] Specifically, the statute generally does not allow the Commission to seek civil penalties for first-time violations of that provision.[122] The fact that the Commission does not have authority to seek penalties for first-time violators may insufficiently deter future law violations. This may put firms that are careful to follow the law, including those that implement reasonable privacy-protective measures, at a competitive disadvantage. New trade regulation rules could, by contrast, set clear legal requirements or benchmarks by which to evaluate covered companies. They also would incentivize all companies to invest in compliance more consistently because, pursuant to the FTC Act, the Commission may impose civil penalties for first-time violations of duly promulgated trade regulation rules.[123]

Second, while the Commission can enjoin conduct that violates Section 5, as a matter of law and policy enforcement, such relief may be inadequate in the context of commercial surveillance and lax data security practices. For instance, after a hacker steals personal consumer data from an inadequately secured database, an injunction stopping the conduct and requiring the business to take affirmative steps to improve its security going forward can help prevent future breaches but does not remediate the harm that has already occurred or is likely to occur.[124]

Third, even in those instances in which the Commission can obtain monetary relief for violations of Section 5, such relief may be difficult to apply to some harmful commercial surveillance or lax data security practices that may not cause direct financial injury or, in any given individual case, do not lend themselves to broadly accepted ways of quantifying harm.[125] This is a problem that is underscored by commercial surveillance practices involving automated decision-making systems where the harm to any given individual or small group of individuals might affect other consumers in ways that are opaque or

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Comm'n, Consumer Data Broker ChoicePoint Failed to Protect Consumers' Personal Data, Left Key Electronic Monitoring Tool Turned Off for Four Months (Oct. 19, 2009), *https://www.ftc.gov/news-events/press-releases/2009/10/consumer-data-broker-choicepoint-failed-protect-consumers.*

[112] *See, e.g.,* 16 CFR part 312 (COPPA Rule); 16 CFR part 314 (GLBA Safeguards Rule). The Commission recently updated the GLBA rules. *See* Press Release, Fed. Trade Comm'n, FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches (Oct. 27, 2021), *https://www.ftc.gov/news-events/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial.*

[113] *See, e.g.,* Fed. Trade Comm'n, *Data Brokers: A Call for Transparency and Accountability* (May 2014), *https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf.*

[114] *See* Fed. Trade Comm'n, *Bringing Dark Patterns to Light: An FTC Workshop* (Apr. 29, 2021), *https://www.ftc.gov/news-events/events-calendar/bringing-dark-patterns-light-ftc-workshop. See also* Press Release, Fed. Trade Comm'n, FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into Subscriptions (Oct. 28, 2021), *https://www.ftc.gov/news-events/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap.* The Commission's recent policy statement on ''negative option marketing,'' moreover, takes up overlapping concerns about the ways in which companies dupe consumers into purchasing products or subscriptions by using terms or conditions that enable sellers to interpret a consumer's failure to assertively reject the service or cancel the agreement as consent. *See* Fed. Trade Comm'n, Enforcement Policy Statement Regarding Negative Option Marketing (Oct. 28, 2021), *https://www.ftc.gov/public-statements/2021/10/enforcement-policy-statement-regarding-negative-option-marketing.* Those practices do not always entail the collection and use of consumer data, and do not always count as ''commercial surveillance'' as we mean the term in this ANPR.

[115] *See* Fed. Trade Comm'n, *Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies* (Oct. 2012), *https://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies/121022facialtechrpt.pdf.*

[116] *See* Fed. Trade Comm'n, *Internet of Things: Privacy & Security in a Connected World* (Jan. 2015), *https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf.*

[117] *See* Fed. Trade Comm'n, *Big Data: A Tool for Inclusion or Exclusion?* (Jan. 2016), *https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf.*

[118] *See* Fed. Trade Comm'n, *Cross-Device Tracking: An FTC Staff Report* (Jan. 2017), *https://www.ftc.gov/system/files/documents/reports/cross-device-tracking-federal-trade-commission-staff-report-january-2017/ftc_cross-device_tracking_report_1-23-17.pdf.*

[119] *See* Fed. Trade Comm'n, *Mobile Privacy Disclosures: Building Trust Through Transparency: FTC Staff Report* (Feb. 2013), *https://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf.*

[120] *See* 15 U.S.C. 46(b). The Commission's recent report on broadband service providers is an example. Press Release, Fed. Trade Comm'n, FTC Staff Report Finds Many internet Service Providers Collect Troves of Personal Data, Users Have Few Options to Restrict Use (Oct 21, 2021), *https://www.ftc.gov/news-events/press-releases/2021/10/ftc-staff-report-finds-many-internet-service-providers-collect.* The Commission also recently commenced a Section 6(b) inquiry into social media companies. *See* Business Blog, Fed. Trade Comm'n, *FTC issues 6(b) orders to social media and video streaming services* (Dec. 14, 2020), *https://www.ftc.gov/news-events/blogs/business-blog/2020/12/ftc-issues-6b-orders-social-media-video-streaming-services.* Past Section 6(b) inquiries related to data privacy or security issues include those involving mobile security updates and the practices of data brokers. *See* Press Release, FTC Recommends Steps to Improve Mobile Device Security Update Practices (Feb. 28, 2018), *https://www.ftc.gov/news-events/press-releases/2018/02/ftc-recommends-steps-improve-mobile-device-security-update;* Press Release, FTC Recommends Congress Require the Data Broker Industry to be More Transparent and Give Consumers Greater Control Over Their Personal Information (May 27, 2014), *https://www.ftc.gov/news-events/press-releases/2014/05/ftc-recommends-congress-require-data-broker-industry-be-more.*

[121] *See, e.g.,* 15 U.S.C. 53, 57b. *See also* Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority,* 170 U. Pa. L. Rev. 71 (2021) (arguing that the Commission should provide whole industries notice of practices that the FTC has declared unfair or deceptive in litigated cease-and-desist orders in order to increase deterrence by creating a basis for the Commission to seek civil penalties pursuant to section 5(m)(1)(B) of the FTC Act against those that engage in such practices with knowledge that they are unfair or deceptive).

[122] Typically, in order to obtain civil monetary penalties under the FTC Act, the Commission must find that a respondent has violated a previously entered cease-and-desist order and then must bring a subsequent enforcement action for a violation of that order. *See* 15 U.S.C. 45(*l*).

[123] *See* 15 U.S.C. 45(m).

[124] The Supreme Court recently held, in *AMG Capital Management, LLC* v. *FTC,* 141 S. Ct. 1341 (2021), that Section 13(b) of the FTC Act, 15 U.S.C. 53(b), does not allow the FTC to obtain equitable monetary relief in federal court for violations of Section 5. This has left Section 19, 15 U.S.C. 57b—which requires evidence of fraudulent or dishonest conduct—as the only avenue for the Commission to obtain financial redress for consumers.

[125] *See generally* Danielle Keats Citron & Daniel J. Solove, *Privacy Harms,* 102 B.U. L. Rev. 793 (2022).

hard to discern in the near term,[126] but are potentially no less unfair or deceptive.

Finally, the Commission's limited resources today can make it challenging to investigate and act on the extensive public reporting on data security practices that may violate Section 5, especially given how digitized and networked all aspects of the economy are becoming. A trade regulation rule could provide clarity and predictability about the statute's application to existing and emergent commercial surveillance and data security practices that, given institutional constraints, may be hard to equal or keep up with, case-by-case.[127]

IV. Questions

The commercial surveillance and lax data security practices that this ANPR describes above are only a sample of what the Commission's enforcement actions, news reporting, and published research have revealed. Here, in this Item, the Commission invites public comment on (a) the nature and prevalence of harmful commercial surveillance and lax data security practices, (b) the balance of costs and countervailing benefits of such practices for consumers and competition, as well as the costs and benefits of any given potential trade regulation rule, and (c) proposals for protecting consumers from harmful and prevalent commercial surveillance and lax data security practices.

This ANPR does not identify the full scope of potential approaches the Commission might ultimately undertake by rule or otherwise. It does not delineate a boundary on the issues on which the public may submit comments. Nor does it constrain the actions the Commission might pursue in an NPRM or final rule. The Commission invites comment on all potential rules, including those currently in force in foreign jurisdictions, individual U.S. states, and other legal jurisdictions.[128]

Given the significant interest this proceeding is likely to generate, and in order to facilitate an efficient review of submissions, the Commission encourages but does not require commenters to (1) submit a short Executive Summary of no more than three single-spaced pages at the beginning of all comments, (2) provide supporting material, including empirical data, findings, and analysis in published reports or studies by established news organizations and research institutions, (3) consistent with the questions below, describe the relative benefits and costs of their recommended approach, (4) refer to the numbered question(s) to which the comment is addressed, and (5) tie their recommendations to specific commercial surveillance and lax data security practices.

a. To what extent do commercial surveillance practices or lax security measures harm consumers?

This ANPR has alluded to only a fraction of the potential consumer harms arising from lax data security or commercial surveillance practices, including those concerning physical security, economic injury, psychological harm, reputational injury, and unwanted intrusion.

1. Which practices do companies use to surveil consumers?

2. Which measures do companies use to protect consumer data?

3. Which of these measures or practices are prevalent? Are some practices more prevalent in some sectors than in others?

4. How, if at all, do these commercial surveillance practices harm consumers or increase the risk of harm to consumers?

5. Are there some harms that consumers may not easily discern or identify? Which are they?

6. Are there some harms that consumers may not easily quantify or measure? Which are they?

7. How should the Commission identify and evaluate these commercial surveillance harms or potential harms? On which evidence or measures should the Commission rely to substantiate its claims of harm or risk of harm?

8. Which areas or kinds of harm, if any, has the Commission failed to address through its enforcement actions?

9. Has the Commission adequately addressed indirect pecuniary harms, including potential physical harms, psychological harms, reputational injuries, and unwanted intrusions?

10. Which kinds of data should be subject to a potential trade regulation rule? Should it be limited to, for example, personally identifiable data, sensitive data, data about protected categories and their proxies, data that is linkable to a device, or non-aggregated data? Or should a potential rule be agnostic about kinds of data?

11. Which, if any, commercial incentives and business models lead to lax data security measures or harmful commercial surveillance practices? Are some commercial incentives and business models more likely to protect consumers than others? On which checks, if any, do companies rely to ensure that they do not cause harm to consumers?

12. Lax data security measures and harmful commercial surveillance injure different kinds of consumers (*e.g.,* young people, workers, franchisees, small businesses, women, victims of stalking or domestic violence, racial minorities, the elderly) in different sectors (*e.g.,* health, finance, employment) or in different segments or ''stacks'' of the internet economy. For example, harms arising from data security breaches in finance or healthcare may be different from those concerning discriminatory advertising on social media which may be different from those involving education technology. How, if at all, should potential new trade regulation rules address harms to different consumers across different sectors? Which commercial surveillance practices, if any, are unlawful such that new trade regulation rules should set out clear limitations or prohibitions on them? To what extent, if any, is a comprehensive regulatory approach better than a sectoral one for any given harm?

b. To what extent do commercial surveillance practices or lax data security measures harm children, including teenagers?

13. The Commission here invites comment on commercial surveillance practices or lax data security measures that affect children, including teenagers. Are there practices or measures to which children or teenagers are particularly vulnerable or susceptible? For instance, are children and teenagers more likely than adults to be manipulated by practices designed to

[126] *See generally* Alicia Solow-Niederman, *Information Privacy and the Inference Economy,* 117 Nw. U. L. Rev. 1, 27–38 (forthcoming 2022; cited with permission from author) (currently available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3921003*).

[127] The Commission is wary of committing now, even preliminarily, to any regulatory approach without public comment given the reported scope of commercial surveillance practices. The FTC Act, however, requires the Commission to identify ''possible regulatory alternatives under consideration'' in this ANPR. 15 U.S.C. 57a(b)(2)(A)(i). Thus, in Item IV below, this ANPR touches on a variety of potential regulatory interventions, including, among others, restrictions on certain practices in certain industries, disclosure, and notice requirements.

[128] The Commission is currently undertaking its regular periodic review of current COPPA enforcement and rules. *See* Fed. Trade Comm'n, Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule, 84 FR 35842 (July 25, 2019), *https://www.federalregister.gov/documents/2019/07/25/2019-15754/request-for-public-comment-on-the-federal-trade-commissions-implementation-of-the-childrens-online.* Nothing in this ANPR displaces or supersedes that proceeding.

encourage the sharing of personal information?

14. What types of commercial surveillance practices involving children and teens' data are most concerning? For instance, given the reputational harms that teenagers may be characteristically less capable of anticipating than adults, to what extent should new trade regulation rules provide teenagers with an erasure mechanism in a similar way that COPPA provides for children under 13? Which measures beyond those required under COPPA would best protect children, including teenagers, from harmful commercial surveillance practices?

15. In what circumstances, if any, is a company's failure to provide children and teenagers with privacy protections, such as not providing privacy-protective settings by default, an unfair practice, even if the site or service is not targeted to minors? For example, should services that collect information from large numbers of children be required to provide them enhanced privacy protections regardless of whether the services are directed to them? Should services that do not target children and teenagers be required to take steps to determine the age of their users and provide additional protections for minors?

16. Which sites or services, if any, implement child-protective measures or settings even if they do not direct their content to children and teenagers?

17. Do techniques that manipulate consumers into prolonging online activity (*e.g.,* video autoplay, infinite or endless scroll, quantified public popularity) facilitate commercial surveillance of children and teenagers? If so, how? In which circumstances, if any, are a company's use of those techniques on children and teenagers an unfair practice? For example, is it an unfair or deceptive practice when a company uses these techniques despite evidence or research linking them to clinical depression, anxiety, eating disorders, or suicidal ideation among children and teenagers?

18. To what extent should trade regulation rules distinguish between different age groups among children (*e.g.,* 13 to 15, 16 to 17, etc.)?

19. Given the lack of clarity about the workings of commercial surveillance behind the screen or display, is parental consent an efficacious way of ensuring child online privacy? Which other protections or mechanisms, if any, should the Commission consider?

20. How extensive is the business-to-business market for children and teens' data? In this vein, should new trade regulation rules set out clear limits on transferring, sharing, or monetizing children and teens' personal information?

21. Should companies limit their uses of the information that they collect to the specific services for which children and teenagers or their parents sign up? Should new rules set out clear limits on personalized advertising to children and teenagers irrespective of parental consent? If so, on what basis? What harms stem from personalized advertising to children? What, if any, are the prevalent unfair or deceptive practices that result from personalized advertising to children and teenagers?

22. Should new rules impose differing obligations to protect information collected from children depending on the risks of the particular collection practices?

23. How would potential rules that block or otherwise help to stem the spread of child sexual abuse material, including content-matching techniques, otherwise affect consumer privacy?

c. How should the Commission balance costs and benefits?

24. The Commission invites comment on the relative costs and benefits of any current practice, as well as those for any responsive regulation. How should the Commission engage in this balancing in the context of commercial surveillance and data security? Which variables or outcomes should it consider in such an accounting? Which variables or outcomes are salient but hard to quantify as a material cost or benefit? How should the Commission ensure adequate weight is given to costs and benefits that are hard to quantify?

25. What is the right time horizon for evaluating the relative costs and benefits of existing or emergent commercial surveillance and data security practices? What is the right time horizon for evaluating the relative benefits and costs of regulation?

26. To what extent would any given new trade regulation rule on data security or commercial surveillance impede or enhance innovation? To what extent would such rules enhance or impede the development of certain kinds of products, services, and applications over others?

27. Would any given new trade regulation rule on data security or commercial surveillance impede or enhance competition? Would any given rule entrench the potential dominance of one company or set of companies in ways that impede competition? If so, how and to what extent?

28. Should the analysis of cost and benefits differ in the context of information about children? If so, how?

29. What are the benefits or costs of refraining from promulgating new rules on commercial surveillance or data security?

d. How, if at all, should the Commission regulate harmful commercial surveillance or data security practices that are prevalent?

i. Rulemaking Generally

30. Should the Commission pursue a Section 18 rulemaking on commercial surveillance and data security? To what extent are existing legal authorities and extralegal measures, including self-regulation, sufficient? To what extent, if at all, are self-regulatory principles effective?

ii. Data Security

31. Should the Commission commence a Section 18 rulemaking on data security? The Commission specifically seeks comment on how potential new trade regulation rules could require or help incentivize reasonable data security.

32. Should, for example, new rules require businesses to implement administrative, technical, and physical data security measures, including encryption techniques, to protect against risks to the security, confidentiality, or integrity of covered data? If so, which measures? How granular should such measures be? Is there evidence of any impediments to implementing such measures?

33. Should new rules codify the prohibition on deceptive claims about consumer data security, accordingly authorizing the Commission to seek civil penalties for first-time violations?

34. Do the data security requirements under COPPA or the GLBA Safeguards Rule offer any constructive guidance for a more general trade regulation rule on data security across sectors or in other specific sectors?

35. Should the Commission take into account other laws at the state and federal level (*e.g.,* COPPA) that already include data security requirements. If so, how? Should the Commission take into account other governments' requirements as to data security (*e.g.,* GDPR). If so, how?

36. To what extent, if at all, should the Commission require firms to certify that their data practices meet clear security standards? If so, who should set those standards, the FTC or a third-party entity?

iii. Collection, Use, Retention, and Transfer of Consumer Data

37. How do companies collect consumers' biometric information? What kinds of biometric information do companies collect? For what purposes do they collect and use it? Are consumers typically aware of that collection and use? What are the benefits and harms of these practices?

38. Should the Commission consider limiting commercial surveillance practices that use or facilitate the use of facial recognition, fingerprinting, or other biometric technologies? If so, how?

39. To what extent, if at all, should the Commission limit companies that provide any specifically enumerated services (*e.g.,* finance, healthcare, search, or social media) from owning or operating a business that engages in any specific commercial surveillance practices like personalized or targeted advertising? If so, how? What would the relative costs and benefits of such a rule be, given that consumers generally pay zero dollars for services that are financed through advertising?

40. How accurate are the metrics on which internet companies rely to justify the rates that they charge to third-party advertisers? To what extent, if at all, should new rules limit targeted advertising and other commercial surveillance practices beyond the limitations already imposed by civil rights laws? If so, how? To what extent would such rules harm consumers, burden companies, stifle innovation or competition, or chill the distribution of lawful content?

41. To what alternative advertising practices, if any, would companies turn in the event new rules somehow limit first- or third-party targeting?

42. How cost-effective is contextual advertising as compared to targeted advertising?

43. To what extent, if at all, should new trade regulation rules impose limitations on companies' collection, use, and retention of consumer data? Should they, for example, institute data minimization requirements or purpose limitations, *i.e.,* limit companies from collecting, retaining, using, or transferring consumer data beyond a certain predefined point? Or, similarly, should they require companies to collect, retain, use, or transfer consumer data only to the extent necessary to deliver the specific service that a given individual consumer explicitly seeks or those that are compatible with that specific service? If so, how? How should it determine or define which uses are compatible? How, moreover, could the Commission discern which data are relevant to achieving certain purposes and no more?

44. By contrast, should new trade regulation rules restrict the period of time that companies collect or retain consumer data, irrespective of the different purposes to which it puts that data? If so, how should such rules define the relevant period?

45. Pursuant to a purpose limitation rule, how, if at all, should the Commission discern whether data that consumers give for one purpose has been only used for that specified purpose? To what extent, moreover, should the Commission permit use of consumer data that is compatible with, but distinct from, the purpose for which consumers explicitly give their data?

46. Or should new rules impose data minimization or purpose limitations only for certain designated practices or services? Should, for example, the Commission impose limits on data use for essential services such as finance, healthcare, or search—that is, should it restrict companies that provide these services from using, retaining, or transferring consumer data for any other service or commercial endeavor? If so, how?

47. To what extent would data minimization requirements or purpose limitations protect consumer data security?

48. To what extent would data minimization requirements or purpose limitations unduly hamper algorithmic decision-making or other algorithmic learning-based processes or techniques? To what extent would the benefits of a data minimization or purpose limitation rule be out of proportion to the potential harms to consumers and companies of such a rule?

49. How administrable are data minimization requirements or purpose limitations given the scale of commercial surveillance practices, information asymmetries, and the institutional resources such rules would require the Commission to deploy to ensure compliance? What do other jurisdictions have to teach about their relative effectiveness?

50. What would be the effect of data minimization or purpose limitations on consumers' ability to access services or content for which they are not currently charged out of pocket? Conversely, which costs, if any, would consumers bear if the Commission does not impose any such restrictions?

51. To what extent, if at all, should the Commission require firms to certify that their commercial surveillance practices meet clear standards concerning collection, use, retention, transfer, or monetization of consumer data? If promulgated, who should set those standards: the FTC, a third-party organization, or some other entity?

52. To what extent, if at all, do firms that now, by default, enable consumers to block other firms' use of cookies and other persistent identifiers impede competition? To what extent do such measures protect consumer privacy, if at all? Should new trade regulation rules forbid the practice by, for example, requiring a form of interoperability or access to consumer data? Or should they permit or incentivize companies to limit other firms' access to their consumers' data? How would such rules interact with general concerns and potential remedies discussed elsewhere in this ANPR?

iv. Automated Decision-Making Systems

53. How prevalent is algorithmic error? To what extent is algorithmic error inevitable? If it is inevitable, what are the benefits and costs of allowing companies to employ automated decision-making systems in critical areas, such as housing, credit, and employment? To what extent can companies mitigate algorithmic error in the absence of new trade regulation rules?

54. What are the best ways to measure algorithmic error? Is it more pronounced or happening with more frequency in some sectors than others?

55. Does the weight that companies give to the outputs of automated decision-making systems overstate their reliability? If so, does that have the potential to lead to greater consumer harm when there are algorithmic errors?

56. To what extent, if at all, should new rules require companies to take specific steps to prevent algorithmic errors? If so, which steps? To what extent, if at all, should the Commission require firms to evaluate and certify that their reliance on automated decision-making meets clear standards concerning accuracy, validity, reliability, or error? If so, how? Who should set those standards, the FTC or a third-party entity? Or should new rules require businesses to evaluate and certify that the accuracy, validity, or reliability of their commercial surveillance practices are in accordance with their own published business policies?

57. To what extent, if at all, do consumers benefit from automated decision-making systems? Who is most likely to benefit? Who is most likely to be harmed or disadvantaged? To what extent do such practices violate Section 5 of the FTC Act?

58. Could new rules help ensure that firms' automated decision-making practices better protect non-English speaking communities from fraud and abusive data practices? If so, how?

59. If new rules restrict certain automated decision-making practices, which alternatives, if any, would take their place? Would these alternative techniques be less prone to error than the automated decision-making they replace?

60. To what extent, if at all, should new rules forbid or limit the development, design, and use of automated decision-making systems that generate or otherwise facilitate outcomes that violate Section 5 of the FTC Act? Should such rules apply economy-wide or only in some sectors? If the latter, which ones? Should these rules be structured differently depending on the sector? If so, how?

61. What would be the effect of restrictions on automated decision-making in product access, product features, product quality, or pricing? To what alternative forms of pricing would companies turn, if any?

62. Which, if any, legal theories would support limits on the use of automated systems in targeted advertising given potential constitutional or other legal challenges?

63. To what extent, if at all, does the First Amendment bar or not bar the Commission from promulgating or enforcing rules concerning the ways in which companies personalize services or deliver targeted advertisements?

64. To what extent, if at all, does Section 230 of the Communications Act, 47 U.S.C. 230, bar the Commission from promulgating or enforcing rules concerning the ways in which companies use automated decision-making systems to, among other things, personalize services or deliver targeted advertisements?

v. Discrimination Based on Protected Categories

65. How prevalent is algorithmic discrimination based on protected categories such as race, sex, and age? Is such discrimination more pronounced in some sectors than others? If so, which ones?

66. How should the Commission evaluate or measure algorithmic discrimination? How does algorithmic discrimination affect consumers, directly and indirectly? To what extent, if at all, does algorithmic discrimination stifle innovation or competition?

67. How should the Commission address such algorithmic discrimination? Should it consider new trade regulation rules that bar or somehow limit the deployment of any system that produces discrimination, irrespective of the data or processes on which those outcomes are based? If so, which standards should the Commission use to measure or evaluate disparate outcomes? How should the Commission analyze discrimination based on proxies for protected categories? How should the Commission analyze discrimination when more than one protected category is implicated (*e.g.,* pregnant veteran or Black woman)?

68. Should the Commission focus on harms based on protected classes? Should the Commission consider harms to other underserved groups that current law does not recognize as protected from discrimination (*e.g.,* unhoused people or residents of rural communities)?

69. Should the Commission consider new rules on algorithmic discrimination in areas where Congress has already explicitly legislated, such as housing, employment, labor, and consumer finance? Or should the Commission consider such rules addressing all sectors?

70. How, if at all, would restrictions on discrimination by automated decision-making systems based on protected categories affect all consumers?

71. To what extent, if at all, may the Commission rely on its unfairness authority under Section 5 to promulgate antidiscrimination rules? Should it? How, if at all, should antidiscrimination doctrine in other sectors or federal statutes relate to new rules?

72. How can the Commission's expertise and authorities complement those of other civil rights agencies? How might a new rule ensure space for interagency collaboration?

vi. Consumer Consent

73. The Commission invites comment on the effectiveness and administrability of consumer consent to companies' commercial surveillance and data security practices. Given the reported scale, opacity, and pervasiveness of existing commercial surveillance today, to what extent is consumer consent an effective way of evaluating whether a practice is unfair or deceptive? How should the Commission evaluate its effectiveness?

74. In which circumstances, if any, is consumer consent likely to be effective? Which factors, if any, determine whether consumer consent is effective?

75. To what extent does current law prohibit commercial surveillance practices, irrespective of whether consumers consent to them?

76. To what extent should new trade regulation rules prohibit certain specific commercial surveillance practices, irrespective of whether consumers consent to them?

77. To what extent should new trade regulation rules require firms to give consumers the choice of whether to be subject to commercial surveillance? To what extent should new trade regulation rules give consumers the choice of withdrawing their duly given prior consent? How demonstrable or substantial must consumer consent be if it is to remain a useful way of evaluating whether a commercial surveillance practice is unfair or deceptive? How should the Commission evaluate whether consumer consent is meaningful enough?

78. What would be the effects on consumers of a rule that required firms to give consumers the choice of being subject to commercial surveillance or withdrawing that consent? When or how often should any given company offer consumers the choice? And for which practices should companies provide these options, if not all?

79. Should the Commission require different consent standards for different consumer groups (*e.g.,* parents of teenagers (as opposed to parents of pre-teens), elderly individuals, individuals in crisis or otherwise especially vulnerable to deception)?

80. Have opt-out choices proved effective in protecting against commercial surveillance? If so, how and in what contexts?

81. Should new trade regulation rules require companies to give consumers the choice of opting out of all or certain limited commercial surveillance practices? If so, for which practices or purposes should the provision of an opt-out choice be required? For example, to what extent should new rules require that consumers have the choice of opting out of all personalized or targeted advertising?

82. How, if at all, should the Commission require companies to recognize or abide by each consumer's respective choice about opting out of commercial surveillance practices—whether it be for all commercial surveillance practices or just some? How would any such rule affect consumers, given that they do not all have the same preference for the amount or kinds of personal information that they share?

vii. Notice, Transparency, and Disclosure

83. To what extent should the Commission consider rules that require companies to make information

available about their commercial surveillance practices? What kinds of information should new trade regulation rules require companies to make available and in what form?

84. In which contexts are transparency or disclosure requirements effective? In which contexts are they less effective?

85. Which, if any, mechanisms should the Commission use to require or incentivize companies to be forthcoming? Which, if any, mechanisms should the Commission use to verify the sufficiency, accuracy, or authenticity of the information that companies provide?

a. What are the mechanisms for opacity?

86. The Commission invites comment on the nature of the opacity of different forms of commercial surveillance practices. On which technological or legal mechanisms do companies rely to shield their commercial surveillance practices from public scrutiny? Intellectual property protections, including trade secrets, for example, limit the involuntary public disclosure of the assets on which companies rely to deliver products, services, content, or advertisements. How should the Commission address, if at all, these potential limitations?

b. Who should administer notice or disclosure requirements?

87. To what extent should the Commission rely on third-party intermediaries (*e.g.,* government officials, journalists, academics, or auditors) to help facilitate new disclosure rules?

88. To what extent, moreover, should the Commission consider the proprietary or competitive interests of covered companies in deciding what role such third-party auditors or researchers should play in administering disclosure requirements?

c. What should companies provide notice of or disclose?

89. To what extent should trade regulation rules, if at all, require companies to explain (1) the data they use, (2) how they collect, retain, disclose, or transfer that data, (3) how they choose to implement any given automated decision-making system or process to analyze or process the data, including the consideration of alternative methods, (4) how they process or use that data to reach a decision, (5) whether they rely on a third-party vendor to make such decisions, (6) the impacts of their commercial surveillance practices, including disparities or other distributional outcomes among consumers, and (7) risk mitigation measures to address potential consumer harms?

90. Disclosures such as these might not be comprehensible to many audiences. Should new rules, if promulgated, require plain-spoken explanations? How effective could such explanations be, no matter how plain? To what extent, if at all, should new rules detail such requirements?

91. Disclosure requirements could vary depending on the nature of the service or potential for harm. A potential new trade regulation rule could, for example, require different kinds of disclosure tools depending on the nature of the data or practices at issue (*e.g.,* collection, retention, or transfer) or the sector (*e.g.,* consumer credit, housing, or work). Or the agency could impose transparency measures that require in-depth accounting (*e.g.,* impact assessments) or evaluation against externally developed standards (*e.g.,* third-party auditing). How, if at all, should the Commission implement and enforce such rules?

92. To what extent should the Commission, if at all, make regular self-reporting, third-party audits or assessments, or self-administered impact assessments about commercial surveillance practices a standing obligation? How frequently, if at all, should the Commission require companies to disclose such materials publicly? If it is not a standing obligation, what should trigger the publication of such materials?

93. To what extent do companies have the capacity to provide any of the above information? Given the potential cost of such disclosure requirements, should trade regulation rules exempt certain companies due to their size or the nature of the consumer data at issue?

viii. Remedies

94. How should the FTC's authority to implement remedies under the Act determine the form or substance of any potential new trade regulation rules on commercial surveillance? Should new rules enumerate specific forms of relief or damages that are not explicit in the FTC Act but that are within the Commission's authority? For example, should a potential new trade regulation rule on commercial surveillance explicitly identify algorithmic disgorgement, a remedy that forbids companies from profiting from unlawful practices related to their use of automated systems, as a potential remedy? Which, if any, other remedial tools should new trade regulation rules on commercial surveillance explicitly identify? Is there a limit to the Commission's authority to implement remedies by regulation?

ix. Obsolescence

95. The Commission is alert to the potential obsolescence of any rulemaking. As important as targeted advertising is to today's internet economy, for example, it is possible that its role may wane. Companies and other stakeholders are exploring new business models.[129] Such changes would have notable collateral consequences for companies that have come to rely on the third-party advertising model, including and especially news publishing. These developments in online advertising marketplace are just one example. How should the Commission account for changes in business models in advertising as well as other commercial surveillance practices?

V. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, it must receive it on or before October 21, 2022. Write ''Commercial Surveillance ANPR, R111004'' 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. The Commission strongly encourages you to submit your comments online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Commercial Surveillance ANPR, R111004'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

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

[129] *See, e.g.,* Brian X. Chen, *The Battle for Digital Privacy Is Reshaping the internet,* N.Y. Times (Sept. 16, 2021), *https://www.nytimes.com/2021/09/16/technology/digital-privacy.html.*

account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before October 21, 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.*

VI. The Public Forum

The Commission will hold a public forum on Thursday, September 8, 2022, from 2 p.m. until 7:30 p.m. eastern time. In light of the ongoing COVID–19 pandemic, the forum will be held virtually, and members of the public are encouraged to attend virtually by visiting *https://www.ftc.gov/news-events/events/2022/09/commercial-surveillance-data-security-anpr-public-forum.* The public forum will address in greater depth the topics that are the subject of this document as well as the rulemaking process with a goal of facilitating broad public participation in response to this ANPR and any future rulemaking proceedings the Commission undertakes. A complete agenda will be posted at the aforementioned website and announced in a press release at a future date. Individuals or entities that would like to participate in the public forum by offering two-minute public remarks, should email *Sept8testimony@ftc.gov.* Please note that this email is only for requests to participate in the public forum and is not a means of submitting comments in response to this ANPR. Please see Item V above for instructions on submitting public comments.

Forum panelists will be selected by FTC staff, and public remarks are first come, first serve. The Commission will place a recording of the proceeding on the public record. Requests to participate in the public remarks must be received on or before August 31, 2022. Individuals or entities selected to participate will be notified on or before September 2, 2022. Because disclosing sources of funding promotes transparency, ensures objectivity, and maintains the public's trust, prospective participants, if chosen, will be required to disclose the source of any support they received in connection with participation at the forum. This funding information will be included in the published biographies as part of the forum record.

By direction of the Commission.

Joel Christie,

Acting Secretary.

Note: The following statements will not appear in the Code of Federal Regulations:

Statement of Chair Lina M. Khan

Today, the Federal Trade Commission initiated a proceeding to examine whether we should implement new rules addressing data practices that are unfair or deceptive.

The Commission brought its first internet privacy case 24 years ago against GeoCities, one of the most popular websites at the time.[1] In the near quarter-century since, digital technologies and online services have rapidly evolved, with transformations in business models, technical capabilities, and social practices. These changes have yielded striking advancements and dazzling conveniences—but also tools that enable entirely new forms of persistent tracking and routinized surveillance. Firms now collect personal data on individuals on a massive scale and in a stunning array of contexts, resulting in an economy that, as one scholar put it, ''represents probably the most highly surveilled environment in the history of humanity.'' [2] This explosion in data collection and retention, meanwhile, has heightened the risks and costs of breaches—with Americans paying the price.[3]

As the country's de facto law enforcer in this domain, the FTC is charged with ensuring that our approach to enforcement and policy keeps pace with these new market realities. The agency has built a wealth of experience in the decades since the *GeoCities* case, applying our century-old tools to new products in order to protect Americans from evolving forms of data abuses.[4] Yet the growing digitization of our economy—coupled with business models that can incentivize endless hoovering up of sensitive user data and a vast expansion of how this data is used [5]—means potentially unlawful practices may be prevalent, with case-by-case enforcement failing to adequately deter lawbreaking or remedy the resulting harms.

[1] Press Release, Fed. Trade Comm'n, internet Site Agrees to Settle FTC Charges of Deceptively Collecting Personal Information in Agency's First Internet Privacy Case (Aug. 13, 1998), *https://www.ftc.gov/news-events/news/press-releases/1998/08/internet-site-agrees-settle-ftc-charges-deceptively-collecting-personal-information-agencys-first.*

[2] Neil Richards, Why Privacy Matters 84 (2021). *See also Oscar Gandy, The Panoptic Sort: A Political Economy of Personal Information* (2021).

[3] *See, e.g.,* Press Release, Fed. Trade Comm'n, Equifax to Pay $575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach (July 22, 2019), *https://www.ftc.gov/news-events/news/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related-2017-data-breach.*

See also Eamon Javers, *The Extortion Economy: Inside the Shadowy World of Ransomware Payouts,* CNBC (Apr. 6, 2021), *https://www.cnbc.com/2021/04/06/the-extortion-economy-inside-the-shadowy-world-of-ransomware-payouts.html;* Dan Charles, *The Food Industry May Be Finally Paying Attention To Its Weakness To Cyberattacks, NPR* (July 5, 2021), *https://www.npr.org/2021/07/05/1011700976/the-food-industry-may-be-finally-paying-attention-to-its-weakness-to-cyberattack;* William Turton & Kartikay Mehrotra, *Hackers Breached Colonial Pipeline Using Compromised Password,* Bloomberg (June 4, 2021), *https://www.bloomberg.com/news/articles/2021-06-04/hackers-breached-colonial-pipeline-using-compromised-password.*

[4] *See* Advanced Notice of Proposed Rulemaking, Trade Regulation Rule on Commercial Surveillance and Data Security, __FR__§ III(a) [hereinafter ''ANPR'']. *See also* Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy,* 114 Colum. L. Rev. 583 (2014).

[5] Remarks of Chair Lina M. Khan, IAPP Global Privacy Summit 2022 (Apr. 11, 2022), *https://www.ftc.gov/news-events/news/speeches/remarks-chair-lina-m-khan-prepared-delivery-iapp-global-privacy-summit-2022.*

Indeed, a significant majority of Americans today feel they have scant control over the data collected on them and believe the risks of data collection by commercial entities outweigh the benefits.[6] Evidence also suggests the current configuration of commercial data practices do not actually reveal how much users value privacy or security.[7] For one, the use of dark patterns and other conduct that seeks to manipulate users underscores the limits of treating present market outcomes as reflecting what users desire or value.[8] More fundamentally, users often seem to lack a real set of alternatives and cannot reasonably forego using technologies that are increasingly critical for navigating modern life.[9]

The data practices of today's surveillance economy can create and exacerbate deep asymmetries of information—exacerbating, in turn, imbalances of power. And the expanding contexts in which users' personal data is used—from health care and housing to employment and education—mean what's at stake with unlawful collection, use, retention, or disclosure is not just one's subjective preference for privacy, but one's access to opportunities in our economy and society, as well as core civil liberties and civil rights.

[6] Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Res. Center (Nov. 15, 2019), *https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/* (noting that 81% of Americans believe that they ''have very little/no control over the data companies collect'' and that ''the potential risks of companies collecting data about them outweigh the benefits'').

[7] *See, e.g.,* Daniel Solove, *The Myth of the Privacy Paradox,* 89 Geo. Wash. L. Rev. 1, 22–32 (2021).

[8] The FTC recently brought a case against Age of Learning, Inc., an educational subscription service that allegedly utilized dark patterns to scam millions of dollars from families. *See* Stipulated Order for Permanent Injunction and Monetary Judgement, *FTC* v. *Age of Learning, Inc.,* No. 2:20–cv–7996 (C.D. Cal. Sept. 8, 2020). *See also* Zeynep Tufekci, *The Latest Data Privacy Debacle,* N.Y. Times (Jan. 30, 2018), *http://www.nytimes.com/2018/01/30/opinion/strava-privacy.html* (''Data privacy is more like air quality or safe drinking water, a public good that cannot be effectively regulated by trusting in the wisdom of millions of individual choices.'').

[9] Bhaskar Chakravorti, *Why It's So Hard for Users to Control Their Data,* Harv. Bus. Rev. (Jan. 30, 2020), *https://hbr.org/2020/01/why-companies-make-it-so-hard-for-users-to-control-their-data* (noting that ''even if users wanted to negotiate more data agency, they have little leverage. Normally, in well-functioning markets, customers can choose from a range of competing providers. But this is not the case if the service is a widely used digital platform.''); *see also* Solove, *supra* note 7, at 29 (''In one survey, 81% of respondents said that they had at least once 'submitted information online when they wished that they did not have to do so.' People often are not afforded much choice or face a choice between two very bad options.'').

The fact that current data practices can have such consequential effects heightens both the importance of wielding the full set of tools Congress has given us, as well as the responsibility we have to do so. In particular, Section 18 of the FTC Act grants us clear authority to issue rules that identify specific business practices that are unlawful by virtue of being ''unfair'' or ''deceptive.'' [10] Doing so could provide firms with greater clarity about the scope of their legal obligations. It could also strengthen our ability to deter lawbreaking, given that first-time violators of duly promulgated trade regulation rules—unlike most first-time violators of the FTC Act [11]—are subject to civil penalties. This would also help dispense with competitive advantages enjoyed by firms that break the law: all companies would be on the hook for civil penalties for law violations, not just repeat offenders.

Today's action marks the beginning of the rulemaking proceeding. In issuing an Advance notice of proposed rulemaking (ANPR), the Commission is seeking comments from the public on the extent and effects of various commercial surveillance and data security practices, as well as on various approaches to crafting rules to govern these practices and the attendant tradeoffs. Our goal at this stage is to begin building a rich public record to inform whether rulemaking is worthwhile and the form potential proposed rules should take. Robust public engagement will be critical—particularly for documenting specific harmful business practices and their prevalence, the magnitude and extent of the resulting consumer harm, the efficacy or shortcomings of rules pursued in other jurisdictions, and how to assess which areas are or are not fruitful for FTC rulemaking.

Because Section 18 lays out an extensive series of procedural steps, we will have ample opportunity to review our efforts in light of any new developments. If Congress passes strong federal privacy legislation—as I hope it does—or if there is any other significant change in applicable law, then the Commission would be able to reassess the value-add of this effort and whether continuing it is a sound use of resources. The recent steps taken by lawmakers to advance federal privacy legislation are highly encouraging, and our agency stands ready to continue aiding that process through technical assistance or otherwise sharing our staff's expertise.[12] At minimum, the record we will build through issuing this ANPR and seeking public comment can serve as a resource to policymakers across the board as legislative efforts continue.

The ANPR poses scores of broad and specific questions to help elicit and encourage responses from a diverse range of stakeholders. I look forward to engaging with and learning from the record we develop on the wide range of issues covered. Highlighted below are a few topics from the ANPR on which I am especially eager for us to build a record:

- Procedural protections versus substantive limits: Growing recognition of the limits of the ''notice and consent'' framework prompts us to reconsider more generally the adequacy of procedural protections, which tend to create process requirements while sidestepping more fundamental questions about whether certain types of data collection and processing should be permitted in the first place.[13] Are there contexts in which our unfairness authority reaches a greater set of substantive limits on data collection? [14] When might bans and prohibitions on certain data practices be most appropriate? [15]
- Administrability: Information asymmetries between enforcers and market participants can be especially stark in the digital economy. How can

[10] 15 U.S.C. 57a. Commissioner Slaughter's statement cogently lays out why our authority here is unambiguous. *See* Statement of Commissioner Rebecca Kelly Slaughter Regarding the Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking (Aug. 11, 2022), at 5–6. *See also* Kurt Walters, *Reassessing the Mythology of Magnuson-Moss: A Call to Revive Section 18 Rulemaking at the FTC,* 16 Harv. L. & Pol'y Rev. (forthcoming 2022).

[11] 15 U.S.C. 53, 57b, 45(l). The FTC's penalty offense authority also provides a basis for seeking civil penalties from some first-time violators. 15 U.S.C. 45(m)(1)(B).

[12] Maria Curi, *Landmark Tech Privacy Protection Bill Approved by House Panel,* Bloomberg (July 20, 2022), *https://news.bloomberglaw.com/privacy-and-data-security/landmark-tech-privacy-protection-bill-approved-by-house-panel.*

[13] Woodrow Hartzog & Neil Richards, *Privacy's Constitutional Moment and the Limits of Data Protection,* 61 B.C. L. Rev. 1687, 1693 (2020) (''[D]ata protection regimes seek to permit more ethical surveillance and data processing at the expense of foundational questions about whether that surveillance and processing should be allowed in the first place.''); Solove, *supra* note 7, at 29 (''The fact that people trade their privacy for products or services does not mean that these transactions are desirable in their current form. . . [T]he mere fact that people make a tradeoff doesn't mean that the tradeoff is fair, legitimate, or justifiable. For example, suppose people could trade away food safety regulation in exchange for cheaper food. There would be a price at which some people would accept greater risks of tainted food. The fact that there is such a price doesn't mean that the law should allow the transaction.'').

[14] ANPR at section IV(b) Q.21; ANPR at section IV(d) Q.43; ANPR at section IV(d) Q.48.

[15] ANPR at section IV(d) Q.76.

we best ensure that any rules we pursue can be easily and efficiently administered and that these rules do not rest on determinations we are not well positioned to make or commitments we are not well positioned to police? How have jurisdictions successfully managed to police obligations such as ''data minimization''? [16]

• Business models and incentives: How should we approach business models that are premised on or incentivize persistent tracking and surveillance, especially for products or services consumers may not be able to reasonably avoid? [17]

• Discrimination based on protected categories: Automated systems used by firms sometimes discriminate based on protected categories—such as race, color, religion, national origin, or sex—including in contexts where this discrimination is unlawful.[18] How should we consider whether new rules should limit or forbid discrimination based on protected categories under our Section 5 unfairness authority? [19]

• Workplace surveillance: Reports suggest extensive tracking, collection, and analysis of consumer data in the workplace has expanded exponentially.[20] Are there particular considerations that should govern how we consider whether data abuses in the workplace may be deceptive or unfair? [21]

To facilitate wide-ranging participation, we are seeking to make this process widely accessible. Our staff has published a ''frequently asked questions'' resource to demystify the rulemaking process and identify opportunities for the public to engage.[22] We will also host a virtual public forum on September 8, where people will be able to provide oral remarks that will be part of the ANPR record.[23]

I am grateful to our agency staff for their work on this ANPR and my colleagues on the Commission for their engagement and input. Protecting Americans from unlawful commercial surveillance and data security practices is critical work, and I look forward to undertaking this effort with both the necessary urgency and rigor.

Statement of Commissioner Rebecca Kelly Slaughter

Three years ago, I gave a speech outlining: why I believed that case-by-case enforcement in the space of data abuses was not effective; how I hoped to see Congress pass a long-overdue federal privacy law; and that, until such a law is signed, the Commission should use its authority under Section 18 to initiate a rulemaking process.[1] I am delighted that Congress appears to be making substantial and unprecedented progress toward a meaningful privacy law, which I am eager to see pass.[2] Nonetheless, given the uncertainty of the legislative process and the time a Section 18 rulemaking necessarily takes, the Commission should not wait any longer than it already has to develop a public record that could support enforceable rules. So I am equally delighted that we are now beginning the Section 18 process by issuing this advance notice of proposed rulemaking (''ANPR'') on commercial surveillance and data security.[3]

It is indisputable that the Federal Trade Commission has expertise in regulating this sector; it is widely recognized as the nation's premier ''privacy enforcer.'' [4] I commend agency staff for their dogged application of our nearly 100-year-old consumer-protection statute (and handful of sector-specific privacy laws) to build that reputation.

Historically, much of that work operated through the straightforward application of those basic consumer-protection principles to privacy. The FTC ensured that companies told users what they were doing with the users' data, insisted that they secure users' consent, and policed companies' promises. But case-by-case enforcement has not systemically deterred unlawful behavior in this market. As our own reports make clear, the prevailing notice-and-choice regime has failed to protect users,[5] and the modes by which sensitive information can be discovered,

[16] ANPR at section IV(d) Q.49.

[17] ANPR at section IV(a) Q.11.

[18] ANPR at section I nn.38–45. *See also* Fed. Trade Comm 'n, *Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color,* at 1–3 (Oct. 2021), *https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf;* Latanya Sweeney, *Discrimination in Online Ad Delivery: Google Ads, Black Names and White Names, Racial Discrimination, and Click Advertising,* 11 Queue 10, 29 (Mar. 2013); Muhammad Ali et al., *Discrimination Through Optimization: How Facebook's Ad Delivery Can Lead to Skewed Outcomes, 3 Proc. ACM on Hum.-Computer Interaction* (2019).

[19] ANPR at section IV(d) Q.65–72. *See* 15 U.S.C. 45(n) (''In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.''). *Cf.* Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter In the Matter of Napleton Automotive Group (Mar. 31, 2022), *https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive.* Other agencies are also examining these practices. *See* Assistant Attorney General Kristen Clark, Keynote Address on AI and Civil Rights for the Department of Commerce's National Telecommunications and Information Administration's Virtual Listening Session (Dec. 14, 2021), *https://www.justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-delivers-keynote-ai-and-civil-rights-department;* Dep't of Lab., Off. of Fed. Contract Compliance Programs, internet Applicant Recordkeeping Rule, FAQ, *https://www.dol.gov/agencies/ofccp/faqs/internet-applicants;* Press Release, Equal Emp. Opportunity Comm'n, EEOC Launches Initiative on Artificial Intelligence and Algorithmic Fairness (Oct. 28, 2021), *https://www.eeoc.gov/newsroom/eeoc-launches-initiative-artificial-intelligence-and-algorithmic-fairness.*

[20] ANPR at section I nn.14–15. *See, e.g.,* Danielle Abril & Drew Harwell, *Keystroke Tracking, Screenshots, and Facial Recognition: The Box May Be Watching Long After the Pandemic Ends,* Wash. Post (Sept. 24, 2021), *https://www.washingtonpost.com/technology/2021/09/24/remote-work-from-home-surveillance/;* Adam Satariano, *How My Boss Monitors Me While I Work From Home, N.Y. Times* (May 6, 2020), *https://www.nytimes.com/2020/05/06/technology/employee-monitoring-work-from-home-virus.html.*

[21] ANPR at sections I, IV(a) Q.12.

[22] The FAQ can be found both in English, available at *https://www.ftc.gov/enforcement/rulemaking/public-participation-section-18-rulemaking-process,* as well as in Spanish, available at *https://www.ftc.gov/es/participacion-publica-en-el-proceso-de-reglamentacion-de-la-ftc-conforme-la-seccion-18.*

[23] The public forum will include a brief presentation on the rulemaking process and this ANPR comment period, panel discussions, and a public remarks section. More information can be found at *https://www.ftc.gov/news-events/events/2022/09/commercial-surveillance-data-security-anpr-public-forum.*

[1] *See* Rebecca Kelly Slaughter, *The Near Future of U.S. Privacy Law,* Silicon Flatirons-University of Colorado Law School (Sept. 6, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf.*

[2] *See* Rebecca Klar, *House Panel Advances Landmark Federal Data Privacy Bill,* The Hill (July 20, 2022), *https://thehill.com/policy/technology/3567822-house-panel-advances-landmark-federal-data-privacy-bill/.*

[3] Fed. Trade Comm'n, Trade Regulation Rule on Commercial Surveillance and Data Security, 87 FR (forthcoming 2022) [hereinafter ''ANPR''].

[4] When Congress passed the Children's Online Privacy Protection Act (''COPPA'') in 1998 it assigned sector-specific privacy enforcement and rulemaking powers to the FTC on top of our UDAP authority. Bills being debated in both House and Senate Commerce Committees build on our ''comparative expertise'' in this field and seek to streamline and enhance our privacy enforcement and rulemaking processes. *See West Virginia* v. *EPA,* 142 S. Ct. 2587, 2613 (2022) ('''When an agency has no comparative expertise' in making certain policy judgments, we have said, 'Congress presumably would not' task it with doing so.'' (quoting *Kisor* v. *Wilkie,* 139 S. Ct. 2400, 2417 (2019))).

[5] An FTC staff 6(b) study on ISP privacy uncovered that companies routinely bury important disclosures in endless terms-of-service and that choice, even when purportedly offered, is ''illusory.'' Fed. Trade Comm'n, *A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major internet Service Providers* 27 (Oct. 21, 2021), *https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-youexamining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf.*

derived, and disclosed have only grown in number and complexity.[6]

Data abuses such as surreptitious biometric or location tracking,[7] unaccountable and discriminatory algorithmic decision-making,[8] or lax data security practices [9] have been either caused by, exacerbated by, or are in service of nearly unfettered commercial data collection, retention, use, and sharing. It is up to the Commission to use the tools Congress explicitly gave us, however rusty we are at wielding them, to prevent these unlawful practices. That is why I have consistently, for years, called for the Commission to begin the process to consider clear, bright-line rules against unfair or deceptive data practices pursuant to our Section 18 authority.[10]

Section 18 rulemaking's virtue lies in being open, iterative, and public. By the same token it is, by congressional design, laborious and time-consuming. But we intend to follow the record where it leads and, if appropriate, issue Trade Regulation Rules to proscribe unlawful conduct. The Commission has proactively taken steps to use this authority as Congress directed. During my time as Acting Chair, we created a Rulemaking Group within the Office of General Counsel, which has already been indispensable in building the agency's capacity during this process.[11] Working with that Group, the Commission updated our Rules of Practice to enhance transparency and shed self-imposed roadblocks to avoid unnecessary and costly delay in these proceedings.[12]

As happy as I am to see us finally take this first step of opening this record, it is not something I take lightly. An initiative like this entails some risk, though I believe further inaction does as well. I have heard arguments, including from my fellow Commissioners, that conducting a rulemaking in the data space is inappropriate, either because Congress is currently debating privacy legislation or even because the topic is simply too consequential or the issues too vast for the Commission to appropriately address. In this statement, I challenge some of these assumptions and then raise some of the issues in which I am especially interested.

On Timing

The best time to initiate this lengthy process was years ago, but the second-best time is now. Effective nationwide rules governing the collection and use of data are long overdue. As the nation's principal consumer-protection agency, we have a responsibility to act.

Restoring Effective Deterrence

The question of effective enforcement is central to this proceeding. Case-by-case enforcement, while once considered a prudent expression of our statutory authority, has not proved effective at deterring illegal conduct in the data space. Trade Regulation Rules can help remedy this problem by providing clear and specific guidance about what conduct the law proscribes and attaching financial consequences to violations of the law.

Providing a financial penalty for first-time lawbreaking is now, in the wake of the loss of our Section 13(b) authority, a particular necessity. Last year, the Supreme Court ruled that we can no longer seek monetary relief in federal court for violations of the FTC Act under our 13(b) authority.[13] I have testified in Congress that the loss of this authority is devastating for consumers who now face a significantly steeper uphill battle to be made whole after suffering a financial injury stemming from illegal conduct.[14] But the loss of 13(b) also hampers our ability to deter unlawful conduct in the first place. In its absence, and without a statutory fix, first-time violators of the FTC Act are unlikely to face monetary consequences for their unlawful practices.[15] Trade Regulation Rules enforced under

[6] *See* Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data,* Fed. Trade Comm'n (July 11, 2022), *https://www.ftc.gov/business-guidance/blog/2022/07/location-health-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal-use* (''Smartphones, connected cars, wearable fitness trackers, ''smart home'' products, and even the browser you're reading this on are capable of directly observing or deriving sensitive information about users.'').

[7] *See, e.g., Mobile Advertising Network InMobi Settles FTC Charges It Tracked Hundreds of Millions of Consumers' Locations Without Permission,* FTC (June 22, 2016), *https://www.ftc.gov/newsevents/press-releases/2016/06/mobile-advertising-network-inmobi-settles-ftc-charges-it-tracked.*

[8] *See, e.g.,* Elisa Jillson, *Aiming for Truth, Fairness, and Equity in Your Company's Use of AI* (Apr. 19, 2021), *https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai.*

[9] *See, e.g.,* Press Release, *FTC Finalizes Action Against CafePress for Covering Up Data Breach, Lax Security* (June 24, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-finalizes-action-against-cafepress-covering-data-breach-lax-security-0.*

[10] *See, e.g.,* Rebecca Kelly Slaughter, *The Near Future of U.S. Privacy Law,* Silicon Flatirons-University of Colorado Law School, (Sept. 6, 2019) *https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf; Remarks of Commissioner Rebecca Kelly Slaughter on Algorithms and Economic Justice,* UCLA School of Law (Jan. 24, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1564883/remarks_of_commissioner_rebecca_kelly_slaughter_on_algorithmic_and_economic_justice_01-24-2020.pdf; Opening Statement of Commissioner Rebecca Kelly Slaughter,* United States Senate Committee on Commerce, Science, and Transportation Hearing on Oversight of the Federal Trade Commission (Aug. 5, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1578979/opening_statement_of_commissioner_rebecca_slaughter_senate_commerce_oversight_hearing.pdf; FTC Data Privacy Enforcement: A Time of Change,* N.Y.U. School of Law (Oct. 16, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1581786/slaughter_-_remarks_on_ftc_data_privacy_enforcement_-_a_time_of_change.pdf; Protecting Consumer Privacy in a Time of Crisis,* Future of Privacy Forum, (Feb. 10, 2021) *https://www.ftc.gov/system/files/documents/public_statements/1587283/fpf_opening_remarks_210_.pdf; Keynote Remarks of FTC Acting Chairwoman Rebecca Kelly Slaughter,* Consumer Federation of America's Virtual Consumer Assembly (May 4, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf;* Rebecca Kelly Slaughter, *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission,* Yale J. L. & Tech. (Aug. 2021), *https://yjolt.org/sites/default/files/23_yale_j.l._tech._special_issue_1.pdf; Statement of Rebecca Kelly Slaughter Regarding the Report to Congress on Privacy and Security* (Oct. 1, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597012/rks_statement_on_privacy_report_final.pdf; Disputing the Dogmas of Surveillance Advertising,* National Advertising Division (Oct. 1, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597050/commissioner_slaughter_national_advertising_division_10-1-2021_keynote_address.pdf; Wait But Why? Rethinking Assumptions About Surveillance Advertising,* IAPP Privacy Security Risk Keynote (Oct. 22, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597998/iapp_psr_2021_102221_final2.pdf; NTIA Listening Session on Privacy, Equity, and Civil Rights Keynote Address of Commissioner Rebecca Kelly Slaughter,* NTIA, (Dec. 14, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1599831/slaughter-ntia-keynote.pdf.*

[11] Press Release, *FTC Acting Chairwoman Slaughter Announces New Rulemaking Group* (Mar. 25, 2021), *https://www.ftc.gov/news-events/news/press-releases/2021/03/ftc-acting-chairwoman-slaughter-announces-new-rulemaking-group.*

[12] Statement of Commissioner Rebecca Kelly Slaughter joined by Chair Lina Khan and Commissioner Rohit Chopra Regarding the Adoption of Revised Section 18 Rulemaking Procedures (July 1, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1591522/joint_rules_of_practice_statement_final_7121_1131am.pdf.*

[13] *AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1347 (2021).

[14] Rebecca Kelly Slaughter, *Opening Statement of Acting Chairwoman Rebecca Kelly Slaughter [on] The Urgent Need to Fix Section 13(b) of the FTC Act,* United States House Committee on Energy and Commerce

Subcommittee on Consumer Protection and Commerce (Apr. 27, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1589456/opening_statement_april_27_house_13b_hearing_427.pdf.*

[15] *See* ANPR at 23 (''For instance, after a hacker steals personal consumer data from an inadequately secured database, an injunction stopping the conduct and requiring the business to take affirmative steps to improve its security going forward can help prevent future breaches but does not remediate the harm that has already occurred or is likely to occur.'').

Section 19 can enable such consequences.[16]

Rulemaking in the Time of ADPPA

For years, Congress has nibbled around the edges of comprehensive federal privacy legislation; it is now engaged in the advanced stages of consideration of such legislation. All members of the Commission have repeatedly called on Congress to act in this space. I have advocated for legislation that sets clear rules regarding data minimization, use restrictions, and secondary uses; that gives us the ability to seek civil penalties for law violations; that gives us flexible APA rulemaking authority so we can act swiftly to address new conduct; and most importantly gives the agency the resources to meaningfully enforce the law.

The House may be the closest it has been in years to seeing legislation like this reach the finish line.[17] I not only welcome it—I prefer Congressional action to strengthen our authority. But I know from personal experience that the road for a bill to become a law is not a straight or easy one.[18] In the absence of that legislation, and while Congress deliberates, we cannot sit idly by or press pause indefinitely on doing our jobs to the best of our ability. As I mentioned above, I believe that we have a duty to use the authorities Congress has already given us to prevent and address these unfair or deceptive practices how we best see fit.

I am certain that action by the Federal Trade Commission will not clip the wings of Congressional ambition. Our work here is complementary to Congress' efforts.[19] The bills supported by the leaders of both Commerce Committees empower the FTC to be a more effective privacy regulator,[20] as will the record we develop pursuant to this ANPR. Section 18 rulemaking, even more so than more common APA rulemaking, gives members of the public the opportunity to be active participants in the policy process. The open record will allow us to hear from ordinary people about the data economy harms they have experienced. We can begin to flex our regulatory muscle by evaluating which of those harms meet the statutory prohibitions on unfair or deceptive conduct and which of those are prevalent in the market. The study, public commentary, and dialogue this proceeding will launch can meaningfully inform any superseding rulemaking Congress eventually directs us to take as well as the Congressional debate should the current legislative progress stall.

Our Authority and the Scope of This Proceeding

Some have balked at this ANPR as overly ambitious for an agency that has not previously issued rules in this area, or as coloring outside the lines of our statute in the topics it addresses, especially in light of the Supreme Court decision in *West Virginia* v. *EPA.* But our authority is as unambiguous as it is limited, and so our regulatory ambit is rightfully constrained—the questions we ask in the ANPR and the rules we are empowered to issue may be consequential, but they do not implicate the ''major questions doctrine.'' [21]

Section 18 Rulemaking

In its grant of Section 18 rulemaking authority to the Commission in 1975 under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Congress explicitly empowered the FTC to ''define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . . .'' [22] Those terms, and therefore our delegated authority, are not defined by ''modest words,'' ''vague terms,'' ''subtle devices,'' or ''oblique or elliptical language.'' [23] Determining what acts ''in commerce'' are unfair or deceptive is central to our statutory mission and their meaning is prescribed by our statutes and nearly 100 years of judicial interpretation.

It is worth reiterating these standards, both as a matter of legal principle and as a note for those participating in this process. A ''deceptive'' act is one that (1) makes a ''representation, omission, or practice that is likely to mislead the consumer'' (2) who is ''acting reasonably in the circumstances'' and (3) is ''material,'' meaning it would ''affect the consumer's conduct or decision with regard to a product or service.'' [24]

Congress updated the FTC Act in 1994, adopting into statute the Commission's policy statement on ''unfairness.'' An act may be ''unfair'' and in violation of the FTC Act if that act (1) ''causes or is likely to cause substantial injury to consumers,'' (2) ''is not reasonably avoidable by consumers themselves,'' and (3) is not ''not outweighed by countervailing benefits to consumers or to competition.'' [25]

Even after finding that a practice is unfair or deceptive we face an additional hurdle to issuing a Notice of proposed rulemaking leading to a possible Trade Regulation Rule. We may issue proposed rules to prevent unfair or deceptive practices only if we find that such practices are ''prevalent.'' We can find a practice prevalent if the FTC has ''issued cease and desist orders regarding such acts or practices,'' or we can determine prevalence through ''any other information available to the Commission'' that ''indicates a widespread pattern of unfair or deceptive acts or practices.'' [26]

We cannot invent the law here. I want to underscore this. In this rulemaking we can address only unfair or deceptive practices that we could have otherwise found unlawful in the ordinary enforcement of our Section 5 authority on a case-by-case basis. But the purpose of Section 18 rulemaking is not merely to memorialize unlawful activity that we have already fully adjudicated.[27]

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[16] In the course of removing our 13(b) equitable monetary relief authority, the Supreme Court admonished the Commission to stop complaining about the ''cumbersome'' Section 19 process and either use our authority in earnest, ask Congress for a fix, or both. *AMG Cap. Mgmt.,* 141 S. Ct. at 1352 (''Nothing we say today, however, prohibits the Commission from using its authority under § 5 and § 19 to obtain restitution on behalf of consumers. If the Commission believes that authority too cumbersome or otherwise inadequate, it is, of course, free to ask Congress to grant it further remedial authority.'').

[17] Gilad Eldman, *Don't Look Now, but Congress Might Pass an Actually Good Privacy Bill,* Wired (July 21, 2022), *https://www.wired.com/story/american-data-privacy-protection-act-adppa/.*

[18] *See* Margaret Harding McGill, *Online Privacy Bill Faces Daunting Roadblocks,* Axios (Aug. 4, 2022), *https://www.axios.com/2022/08/04/online-privacy-bill-roadblocks-congress.*

[19] A group of nine Senators wrote that these are ''parallel'' efforts and encouraged the Commission to ''take advantage of every took in its toolkit to protect consumers' privacy.'' Notably, a majority of these members have either introduced or cosponsored FTC-empowering privacy legislation. Senators Booker, Blumenthal, Coons, Luján, Markey, Klobuchar, Schatz, Warren, and Wyden, *2021.09.20 FTC Privacy Rulemaking* (Sept. 20, 2021), *https://www.blumenthal.senate.gov/imo/media/doc/2021.09.20%20-%20FTC%20-%20Privacy%20Rulemaking.pdf.*

[20] *See, e.g.,* American Data Privacy and Protection Act, H.R.8152, 117th Congress (2022); *See* Consumer Online Privacy Rights Act, S.3195, 117th Congress (2021).

[21] *West Virginia,* 142 S. Ct. at 2614 (2022) (''Given these circumstances [of a novel claim of authority by an agency] . . . the Government must—under the major questions doctrine—point to 'clear congressional authorization' to regulate in that manner.''). The FTC is exercising here, however, its central authority: to define unfair or deceptive acts or practices, as it has done in enforcement matters for nearly 100 years under Section 5 and in rulemaking under Section 18 for nearly 50.

[22] 15 U.S.C. 57a(a)(1)(B).

[23] *West Virginia,* 142 S. Ct. at 2609 (internal quotation marks omitted).

[24] FTC Policy Statement on Deception (Oct. 14, 1983), *appended to In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984), *https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.*

[25] 15 U.S.C. 45(n).

[26] 15 U.S.C. 57a(b)(3).

[27] In fact, we have a different statute for that process: our penalty offense authority. *See* Fed.

The ANPR allows us to look at harms systematically and address the root of that unlawful activity. The limiting principle for the scope of conduct we may regulate is the contours of the law itself: acts that are both deceptive or unfair *and* prevalent.

Scope of the ANPR

The scope of the ANPR is reflective of the broad set of issues that arise from unfettered commercial data collection and use. That a public inquiry into this market asks a wide range of questions—inquiring about issues like collection and consent, algorithms, ad-delivery, demographic data, engagement, and the ecosystem's effects on kids and teens—should not be surprising. This is broadly the same scope of issues the Commission is currently examining in our social media and video streaming study initiated under Chair Simons in 2020.[28]

I believe it is appropriate ask those questions, and more, in this ANPR. I expect that the record will alert us, and Congress, to widespread harms that may otherwise have not reached our attention. Some of those harms may be better addressed under our other sector-specific privacy authorities or under our competition authority. A holistic look at the data economy allows us to better understand the interplay between our consumer protection and competition missions and, should we get to that stage, propose better and more effective rules.

Are data abuse rules different?

Some have argued that this exercise of our rulemaking authority is permissible to address some unfair or deceptive practices in some other sector of the market but not this one.[29] The rules the agency has historically issued already touch hundreds of millions of Americans' lives. FTC rules cover business conduct in funerals,[30] the marketing of new opportunities to consumers,[31] the eyeglasses market,[32] and unfair credit practices.[33] These rules cover sectors with hundreds of billions in economic output. The Franchise Rule,[34] for example, helps govern the business conduct of a sector that employs over 8 million people and contributes over 3% to the country's GDP.[35] This is all to say that the ''bigness'' of an industry, or the potential significance of rulemaking in that industry, should have little bearing on the legal question about the scope of our authority.[36] As a policy matter, ''bigness,'' if anything, should compel extra scrutiny of business practices on our part, not a free pass, kid gloves, or a punt to Congress. Though their products and services touch all our lives, technology companies are not exempt from generally applicable laws. If we have the authority to police their business practices by case-by-case enforcement to protect the public from potentially unfair or deceptive practices, and we do, then we have the authority to examine how *ex ante* rules may also govern those practices.

Issues of Particular Interest

I want to encourage public participation in this comment period, especially from the voices we hear from less at the Commission. Having information in the record from a diverse set of communities and commenters will strengthen the record and help lay a firm foundation for potential agency action. I encourage the public to engage with all the issues we have teed up in the ANPR and to think about how commercial surveillance and abusive data practices affect them not only as consumers of products and services but also as workers, small business owners, and potential competitors to dominant firms.[37] I'm eager to see and evaluate the record in its entirety, but there are some issues I have had a particular interest in during my time at the Commission. I've highlighted some of them below.

Minimization and Purpose and Use Specifications

I have spoken at length about my interest in ideas around data minimization.[38] The ANPR asks several questions related to the concept, and I am eager to see comments about potentially unlawful practices in this area, the state of data collection in the industry, and how that relates to user expectations of the products or services on offer.[39]

Civil Rights, Vulnerable Populations, and Discriminatory Algorithms

Data abuses are a civil rights issue, and commercial surveillance can be especially harmful from a civil rights and equity perspective. The FTC's own reports have explored these issues for years.[40] The FTC's mission to protect consumers from unfair or deceptive practices in commerce must include examining how commercial practices affect the marginalized and vulnerable. Discrimination based on protected-class status is obviously unfair in the colloquial sense and may sometimes be unfair in Section 5 terms as well.[41] As I have written, failure to closely scrutinize the impact of data-driven decision-making tools can create discriminatory outcomes.[42] The ANPR

Trade Comm'n, *Notices of Penalty Offenses, https://www.ftc.gov/enforcement/penalty-offenses.*

[28] *See* Lesley Fair, *FTC issues 6(b) orders to social media and video streaming services* (Dec. 14, 2020), *https://www.ftc.gov/business-guidance/blog/2020/12/ftc-issues-6b-orders-social-media-and-video-streaming-services.*

[29] *See* Jordan Crenshaw, *Congress Should Write Privacy Rules, Not the FTC,* U.S. Chamber of Commerce (Sept. 17, 2021), *https://www.uschamber.com/technology/data-privacy/congress-should-write-privacy-rules-not-the-ftc.*

[30] 16 CFR part 453.

[31] 16 CFR part 437.

[32] 16 CFR part 456.

[33] 16 CFR part 444.

[34] 16 CFR part 436.

[35] *See* Int'l Francise Ass'n, *2022 Franchising Economic Outlook* (Feb. 15, 2022) *https://www.franchise.org/franchise-information/franchise-business-outlook/2022franchising-economic-outlook.*

[36] *West Virginia,* 142 S. Ct. at 2628 (Kagan, J., dissenting) (''A key reason Congress makes broad delegations . . . is so an agency can respond, appropriately and commensurately, to new and big problems. Congress knows what it doesn't and can't know when it drafts a statute; and Congress therefore gives an expert agency the power to address issues—even significant ones—as and when they arise.'').

[37] People are far more than simply consumers of products and services. Effective consumer protection has to think about people as workers and potential entrepreneurs too. *See* Statement of Commissioner Rebecca Kelly Slaughter Regarding Advance Notice of Proposed Rulemaking on the Use of Earnings Claims (Feb. 17, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/RKS%20Earnings%20Claim%20Statement.pdf.*

[38] *See* Rebecca Kelly Slaughter, *Keynote Closing Remarks of Commissioner Rebecca Slaughter at IAPP 2021,* IAPP (Oct. 22, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597998/iapp_psr_2021_102221_final2.pdf.

[39] See ANPR at 31.

[40] See Fed. Trade Comm'n, Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues, (Jan. 2016), *https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusionunderstanding-issues/160106big-data-rpt.pdf. See also* Fed. Trade Comm'n, *A Look At What ISPs Know About You: Examining the Privacy Practices of Six Major internet Service Providers* (Oct. 21, 2021), *https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-youexamining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf.*

[41] Commercial practices that discriminate against people based on their immutable characteristics neatly fit into Section 5's prohibitions. They may cause or be likely to cause substantial injury to consumers, may not be reasonably avoidable by those consumers, and may not be outweighed by benefits to consumers or competition. *See* Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter, In the Matter of Napleton Automotive Group (Mar. 31, 2022), *https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive.*

[42] See Rebecca Kelly Slaughter, *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission,* Yale J. L. & Tech. (Aug. 2021), *https://yjolt.org/sites/default/files/23_yale_j.l._tech._special_issue_1.pdf.*

asks several questions about the prevalence of such practices, the extent of our authority in this area, and how the FTC, working with other enforcement agencies, may ameliorate those potential harms.[43]

Kids and Teens

As I remarked at COPPA's 20th anniversary, our experience enforcing the Children's Online Privacy Protection Act (''COPPA'') surely has lessons for any potential rulemaking.[44] What can the statutory scheme in COPPA tell us about how to structure potential rules? As a parent, I also have concerns for children as they pass outside the COPPA safety zone of under-13 years old. Are there harms we should examine that affect young teenagers in particular?[45]

Conclusion

The path the Commission is heading down by opening this rulemaking process is not an easy one. But it is a necessary one. The worst outcome, as I said three years ago, is not that we get started and then Congress passes a law; it is that we never get started and Congress never passes a law. People have made it clear that they find this status quo unacceptable.[46] Consumers and businesses alike deserve to know, with real clarity, how our Section 5 authority applies in the data economy. Using the tools we have available benefits the whole of the Commission's mission; well-supported rules could facilitate competition, improve respect for and compliance with the law, and relieve our enforcement burdens.

I have an open mind about this process and no certainty about where our inquiry will lead or what rules the record will support, as I believe is my obligation. But I do know that it is past time for us to begin asking these questions and to follow the facts and evidence where they lead us. I expect that the Commission will take this opportunity to think deeply about people's experiences in this market and about how to ensure that the benefits of progress are not built on an exploitative foundation. Clear rules have the potential for making the data economy more fair and more equitable for consumers, workers, businesses, and potential competitors alike.

I am grateful to the Commission staff for their extensive work leading up to the issuance of this ANPR,[47] as well as to the Chair for her leadership in pushing this project across the starting line, and to my fellow Commissioners for their thoughtful engagement with the document. Both the Chair and Commissioner Bedoya brought their expertise and vision to this endeavor, which is reflected throughout the final product. And, although I do not agree with my dissenting colleagues Commissioners Phillips and Wilson, I very much appreciate their constructive engagement, which has helped improve not only my own thinking but also the substance of the ANPR. I look forward to continued dialogue with all of them.

Statement of Commissioner Alvaro M. Bedoya

Our nation is the world's unquestioned leader on technology. We are the world's unquestioned leader in the data economy. And yet we are almost alone in our lack of meaningful protections for this infrastructure. We lack a modern data security law. We lack a baseline consumer privacy rule. We lack civil rights protections suitable for the digital age. This is a landscape ripe for abuse.

Now it is time to act. Today, we are beginning the hard work of considering new rules to protect people from unfair or deceptive commercial surveillance and data security practices.

My friend Commissioner Phillips argues that this advance notice of proposed rulemaking (''ANPR'') ''recast[s] the Commission as a legislature,'' and ''reaches outside the jurisdiction of the FTC.''[1] I respectfully disagree. Today, we're just asking questions, exactly as Congress has directed us to do.[2] At this *most* preliminary step, breadth is a feature, not a bug. We need a diverse range of public comments to help us discern whether and how to proceed with notices of proposed rulemaking. There is much more process to come.

In 1975, Congress passed the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (the ''Magnuson-Moss Act'').[3] That Act made explicit the Commission's authority to prescribe rules prohibiting unfair or deceptive trade practices. It also set out steps for doing so, including providing informal oral hearings with a limited right of cross examination, which were consistent with best practices of that time.[4] In the decade following its passage, the Magnuson-Moss Act was viewed as ''substantially increasing the agency's rulemaking powers.''[5]

Together with Congress's modest amendments to this process in 1980[6] and 1994,[7] federal law now gives us a clear roadmap for this work.[8] We will follow it to the letter.

The bipartisan American Data Privacy and Protection Act (ADPPA) is the strongest privacy bill that has ever been this close to passing. I hope it does pass. I hope it passes soon. What Chairman Frank Pallone, Ranking Member Cathy McMorris Rodgers, Senator Roger

[43] See ANPR at 36.

[44] See Rebecca Kelly Slaughter, *COPPA at 20: Protecting Children's Privacy in the New Digital Era,* Georgetown Univ. Law Ctr., (Oct. 24, 2018) *https://www.ftc.gov/system/files/documents/public_statements/1417811/opening_remarks_of_commissioner_slaughter_georgetown_law_coppa_at_20_event.pdf.*

[45] See ANPR at 27.

[46] See Lee Raine, *Americans' Complicated Feelings About Social Media in an Era of Privacy Concerns,* Pew Research Center (Mar. 27, 2018), *https://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-social-media-in-an-era-of-privacy-concerns* (''Some 80% of social media users said they were concerned about advertisers and businesses accessing the data they share on social media platforms, and 64% said the government should do more to regulate advertisers.''); Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Research Center (Nov. 15, 2019), *https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information* (''Some 81% of the public say that the potential risks they face because of data collection by companies outweigh the benefits. . .''). These are not just theoretical concerns: The lack of effective data protection is harming the vitality of the tech sector. *See* Andrew Perrin, *Half of Americans have decided not to use a product or service because of privacy concerns,* Pew Research Center (Apr. 14, 2020), *https://www.pewresearch.org/fact-tank/2020/04/14/half-of-americans-have-decided-not-to-use-a-product-or-service-because-of-privacy-concerns/.*

[47] I would like to particularly acknowledge the hard work of Olivier Sylvain, Rashida Richardson, Gaurav Laroia, Janice Kopec, Austin King, Aaron Rieke, Bobbi Spector, Audrey Austin, Kristin Cohen, Mark Eichorn, Jim Trilling, and Peder Magee. And I would be remiss if I did not recognize the extraordinary contributions of Kurt Walters, who, as a law clerk in my office in summer 2019, began the process of debunking myths around Section 18 rulemaking, resulting in his law review article that is cited by several of my colleagues. *See* Kurt Walters, *Reassessing the Mythology of Magnuson-Moss: A Call to Revive Section 18 Rulemaking at the FTC,* 16 Harv. L. & Pol'y Rev. (forthcoming 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3875970.*

[1] Dissenting Statement of Commissioner Noah Joshua Phillips, *Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking* (Aug. 11, 2022).

[2] Federal Trade Commission Improvements Act of 1980, Public Law 96–252, 94 Stat. 374.

[3] Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Public Law 93–637, 88 Stat. 2183 (1975).

[4] *Id.* at sec. 202 (adding § 18(c) of the FTC Act).

[5] Kurt Walters, *Reassessing the Mythology of Magnuson-Moss: A Call to Revive Section 18 Rulemaking at the FTC,* 16 Harvard L. & Pol'y Rev. (forthcoming 2022) (manuscript at 13), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3875970.*

[6] Public Law 96–252, 94 Stat. 374 (1980).

[7] Federal Trade Commission Act Amendments of 1994, Public Law 103–312, Sections 3, 5, 108 Stat. 1691, 1691–92.

[8] 15 U.S.C. 57a (2018).

Wicker and their colleagues have accomplished is formidable and promising. This ANPR will not interfere with that effort. I want to be clear: Should the ADPPA pass, I will not vote for any rule that overlaps with it. There are no grounds to point to this process as reason to delay passage of that legislation.

Turning finally to the substance of the ANPR itself: It is a priority for me that the Commission, throughout this rulemaking process, stays focused on the needs of people who are most at risk of being left behind by new technology in the modern economy.[9] So while I will be interested in answers to all of our questions, I am keenly interested to learn about:

1. Emerging discrimination issues (Questions 65–72), especially from civil rights experts and affected communities. I agree with Commissioner Slaughter and Chair Khan that our unfairness authority is a powerful tool for combatting discrimination.[10] It *clearly* is.[11] Given significant gaps in federal antidiscrimination laws, especially related to internet platforms and technology companies,[12] I believe the Commission must act to protect people's civil rights.

2. The mental health of kids and teens (Question 17), especially from youth development experts and psychologists. A growing body of evidence suggests that teenagers, particularly teenage girls, who spend more than two or three hours daily on social media, suffer from increased rates of depression, anxiety, and thoughts of suicide and self-harm.[13] This is a nuanced issue, and peer-reviewed research is still developing.[14] But this nuance does not diminish the urgency of this work, and in fact heightens our need for comments on it. I appreciate especially the partnership of Commissioner Wilson in this area.

3. How to protect non-English speaking communities from fraud and other abusive data practices (Question 58), especially from affinity groups, internet platforms, and experts in fraud prevention practices. We know that many non-English language communities are disproportionately targeted in the offline world, and I am worried the story is even worse online. I'd like to hear more about how new rules might encourage more effective enforcement by both the Commission and private firms against scams and fraud.

4. How to protect against unfair or deceptive practices related to biometrics (Questions 37–38). A new generation of remote biometric technology is transforming our ability to move in public with some semblance of privacy. I'd welcome proposals for how rules may address and prevent abuse and harmful invasions of privacy.

I want to recognize Commissioner Slaughter for her early vision on this rulemaking process,[15] Chair Khan for her leadership in moving this effort forward, and all the agency staff who worked on it. Although my Republican colleagues are voting against this ANPR, I want them and the public to know I'll still seek their input throughout the process that follows.

I am most grateful to the members of the public, civil society, and small businesses community who will take the time to comment on this ANPR. We need your input. We will read it carefully and with interest.

Dissenting Statement of Commissioner Noah Joshua Phillips

Legislating comprehensive national rules for consumer data privacy and security is a complicated undertaking. Any law our nation adopts will have vast economic significance. It will impact many thousands of companies, millions of citizens, and billions upon billions of dollars in commerce. It will involve real trade-offs between, for example, innovation, jobs, and economic growth on the one hand and protection from privacy harms on the other. (It will also require some level of social consensus about which harms the law can and should address.) Like most regulations, comprehensive rules for data privacy and security will likely displace some amount of competition. Reducing the ability of companies to use data about consumers, which today facilitates the provision of free services, may result in higher prices—an effect that policymakers would be remiss not to consider in our current inflationary environment.[1]

National consumer privacy laws pose consequential questions, which is why I have said, repeatedly,[2] that Congress—

[9] Alvaro M. Bedoya, *Remarks of Commissioner Alvaro M. Bedoya at the National Association of Attorneys General Presidential Summit* (Aug. 9, 2022), *https://www.ftc.gov/news-events/news/speeches/remarks-commissioner-alvaro-m-bedoya-national-association-attorneys-general-presidential-summit.*

[10] *See* Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter, *Matter of Napleton Automotive Group* (Mar. 31, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Chair%20Lina%20M.%20Khan%20Joined%20by%20RKS%20in%20re%20Napleton_Finalized.pdf* (''[W]e take this as an opportunity to offer how the Commission should evaluate under its unfairness authority any discrimination that is found to be based on disparate treatment or have a disparate impact.''); Rebecca Kelly Slaughter, *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission* (Aug. 2021), *https://law.yale.edu/sites/default/files/area/center/isp/documents/algorithms_and_economic_justice_master_final.pdf.*

[11] When a business substantially injures a person *because of who they are,* and that injury is not reasonably avoidable or outweighed by a countervailing benefit, that business has acted unlawfully. *See* Federal Trade Commission, *Policy Statement on Unfairness* (Dec. 17, 1980), *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness* (''[t]o justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.'').

[12] For example, Title VII of the Civil Rights Act of 1964 covers employers and employment agencies, but does not directly address hiring technology vendors, digital sourcing platforms, and other companies that intermediate people's access to employment opportunity. *See* Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2. Similarly, the Equal Credit Opportunity Act (ECOA) primarily covers ''creditors.'' *See* ECOA, 15 U.S.C. 1691(a) (2014). This scope creates similar coverage questions, including in financial markets related to hiring education. *See, e.g.,* Stephen Hayes & Kali Schellenberg, *Discrimination is ''Unfair'': Interpreting UDA(A)P to Prohibit Discrimination,* Student Borrower Protection Center (Apr. 2021), at 11, *https://protectborrowers.org/wp-content/uploads/2021/04/Discrimination_is_Unfair.pdf.*

[13] Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time,* 6 Clinical Psychological Science 1, 3, 10 (Jan. 2018), *https://doi.org/10.1177/2167702617723376;* Hugues Sampasa-Kanyiga & Rosamund Lewis, *Frequent use of social networking sites is associated with poor psychological functioning among children and adolescents,* 18(7) Cyberpsychology, Behavior, and Social Networking 380 (Jul. 2015), *https://www.researchgate.net/publication/280059931_Frequent_Use_of_Social_Networking_Sites_Is_Associated_with_Poor_Psychological_Functioning_Among_Children_and_Adolescents.*

[14] *See, e.g.,* Amy Orban & Andrew K. Przybylski, *The association between adolescent well-being and digital technology use,* 3 Nature Human Behaviour 173 (Feb. 2019), *https://www.nature.com/articles/s41562-018-0506-1* (criticizing Twenge et al. at *supra* note 13).

[15] *See, e.g.,* Rebecca Kelly Slaughter, *The Near Future of U.S. Privacy Law,* Silicon Flatirons-University of Colorado Law School (Sept. 6, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf* (''I believe the time has come to consider a Mag-Moss data-protection rule.'').

[1] German Lopez, *Inflation's 40-Year High,* N.Y. Times (Apr. 13, 2022), *https://www.nytimes.com/2022/04/13/briefing/inflation-forty-year-high-gas-prices.html.*

[2] *See, e.g.,* Statement of Commissioner Noah Joshua Phillips Regarding the Report to Congress on Privacy and Security (Oct. 1, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597020/commissioner_phillips_dissent_to_privacy_report_to_congress_updated_final_93021_for_posting.pdf;* Sen. Roger Wicker, Rep. Cathy McMorris Rodgers & Noah Phillips, *FTC must leave privacy legislating to Congress,* Wash. Exam'r (Sept. 29, 2021), *https://www.washingtonexaminer.com/opinion/op-eds/ftc-must-leave-privacy-legislating-to-congress;* Prepared Oral Statement of Commissioner Noah Joshua Phillips Before the House Committee on Energy and Commerce Subcommittee on Consumer Protection

Continued

not the Federal Trade Commission (''FTC'' or ''Commission'')—is where national privacy law should be enacted. I am heartened to see Congress considering just such a law today,[3] and hope this Commission process does nothing to upset that consideration.

So I don't think we should do this. But if you're going to do it, do it right. The Commercial Surveillance and Data Security advance notice of proposed rulemaking (''ANPR'') issued today by a majority of commissioners provides no notice whatsoever of the scope and parameters of what rule or rules might follow; thereby, undermining the public input and congressional notification processes. It is the wrong approach to rulemaking for privacy and data security.

What the ANPR does accomplish is to recast the Commission as a legislature, with virtually limitless rulemaking authority where personal data are concerned. It contemplates banning or regulating conduct the Commission has never once identified as unfair or deceptive. That is a dramatic departure even from recent Commission rulemaking practice. The ANPR also contemplates taking the agency outside its bailiwick. At the same time, the ANPR virtually ignores the privacy and data security concerns that have animated our enforcement regime for decades. A cavalcade of regulations may be on the way, but their number and substance are a mystery.

The ANPR Fails To Provide Notice of Anything and Will Not Elicit a Coherent Record

The ANPR fails to live up to the promise in its name, to give advance notice to the public (and Congress) of what the Commission might propose. The FTC Act requires an ANPR to ''contain a brief description of the area of inquiry under consideration, the objective which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission.'' [4] This ANPR flunks even that basic test. The areas of inquiry are vast and amorphous, and the objectives and regulatory alternatives are just not there. It is impossible to discern from this sprawling document—which meanders in and out of the jurisdiction of the FTC and goes far afield from traditional data privacy and security—the number and scope of rules the Commission envisions.[5] The document stands in stark contrast to the focus that characterizes recent ANPRs issued by the Commission, which addressed far more limited topics like impersonating a government entity or private business, deceptive earnings claims, or the scope of the Telemarketing Sales Rule.[6] I supported each of those.

A well-crafted ANPR is calibrated to develop a thorough record. But this ANPR addresses too many topics to be coherent. It requests information ranging from what practices companies currently use to ''surveil consumers'' [7] to whether there should be a rule granting teens an ''erasure mechanism,'' [8] what extent any new commercial surveillance rule would impede or enhance innovation,[9] the administrability of any data minimization or purpose limitation requirements,[10] the ''nature of the opacity of different forms of commercial surveillance practices,'' [11] and whether the Commission has ''adequately addressed indirect pecuniary harms, including . . . psychological harms.'' [12]

The ANPR provides no clue what rules the FTC might ultimately adopt. In fact, the Commission expressly states that the ANPR does not identify the full scope of approaches it could undertake, does not delineate a boundary on issues on which the public can comment, and in no way constrains the actions it might take in an NPRM or final rule.[13] This scattershot approach creates two obvious problems: stakeholders cannot discern how to engage meaningfully and provide comment, and the lack of focus for their comments will give the Commission a corollary ability to proceed in any direction it chooses. I earnestly cannot see how this document furthers an effort to fashion discrete and durable privacy and data security rules.

The ANPR poses some 95 questions about the myriad topics it purports to address, but many simply fail to provide the detail necessary for commenters to prepare constructive responses. Take the ANPR's blanket request for cost-benefit analyses:

> [T]he Commission invites public comment on (a) the nature and prevalence of harmful commercial surveillance and lax data security practices, (b) the balance of costs and countervailing benefits of such practices for consumers and competition, as well as the costs and benefits of any given potential trade regulation rule, and (c) proposals for protecting consumers from harmful and prevalent commercial surveillance and lax data security practices.[14]

This question asks the public to comment on the costs and benefits of any business practice and any possible regulation involving ''commercial surveillance,'' a term defined so broadly (and with such foreboding [15]) that it captures any collection or use of consumer data.[16] It goes on to ask commenters how the Commission should evaluate the answers, as if the FTC Act does not provide a framework for fashioning such regulations (it does) and the Commission does not know how to apply it (I hope we do).[17]

These kinds of questions are not conducive to stakeholders submitting data and analysis that can be compared and considered in the context of a

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and Commerce, Hearing on ''Transforming the FTC: Legislation to Modernize Consumer Protection'' (July 28, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592981/prepared_statement_0728_house_ec_hearing_72821_for_posting.pdf.*

[3] *See* Rebecca Klar, *House panel advances landmark federal data privacy bill,* The Hill (July 20, 2022), *https://thehill.com/policy/technology/3567822-house-panel-advances-landmark-federal-data-privacy-bill/;* Press Release, House Committee on Energy and Commerce, *House and Senate Leaders Release Bipartisan Discussion Draft of Comprehensive Data Privacy Bill* (June 3, 2022), *https://energycommerce.house.gov/newsroom/press-releases/house-and-senate-leaders-release-bipartisan-discussion-draft-of.*

[4] 15 U.S.C. 57a(b)(2)(A)(i).

[5] The Commission is not even limiting itself to Section 18 rules that must follow the procedures laid out in Magnuson-Moss Warranty Act, Public Law 93–637, 88 Stat. 2183. The ANPR notes that it is requesting information on how commercial surveillance harms competition, which could inform competition rulemaking. Other commissioners may believe the Commission may promulgate such rules, including without an ANPR. I do not. *See* Prepared Remarks of Commissioner Noah Joshua Phillips at FTC Non-Compete Clauses in the Workplace Workshop (Jan. 9, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1561697/phillips_-_remarks_at_ftc_nca_workshop_1-9-20.pdf.*

[6] *See* Trade Regulation Rule on Impersonation of Government and Businesses, 86 FR 72901 (Dec. 23, 2021), *https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses;* Deceptive or Unfair Earnings Claims, 87 FR 13951 (Mar. 11, 2022), *https://www.federalregister.gov/documents/2022/03/11/2022-04679/deceptive-or-unfair-earnings-claims;* Telemarketing Sales Rule, 87 FR 33662 (June 3, 2022), *https://www.federalregister.gov/documents/2022/06/03/2022-10922/telemarketing-sales-rule.*

[7] *See* section IV, Q.1 of this document, ANPR for Trade Regulation Rule on Commercial Surveillance and Data Security. [hereinafter ANPR].

[8] *Id.* at section IV, Q.14.

[9] *Id.* at section IV, Q.26.

[10] *Id.* at section IV, Q.49.

[11] *Id.* at section IV, Q.86.

[12] I am not sure what this means. Should the Commission be obtaining monetary redress for the cost of consumers' therapy? *Id.* at section IV, Q.9.

Where conduct is not deceptive, the FTC Act only permits us to regulate conduct that causes ''substantial injury''. 15 U.S.C. 45(n).

[13] ANPR at 24.

[14] *Id.*

[15] In adopting this academic pejorative, the ANPR trades a serious attempt to understand business practices it would regulate for the chance to liken untold companies large and small to J. Edgar Hoover's COINTELPRO.

[16] ''For the purposes of this ANPR 'commercial surveillance' refers to the collection, aggregation, analysis, retention, transfer, or monetization of consumer data and the direct derivatives of that information.'' ANPR at 13.

[17] *Id.* at section IV, Qs.24–29.

specific rule. The Commission would be more likely to receive helpful data if it asked commenters for the costs and benefits of some defined kind of conduct, or a particular rule to regulate it—say, information collected by exercise apps, or a rule limiting the use of third-party analytics by those apps.[18] Without specific questions about business practices and potential regulations, the Commission cannot hope for tailored responses providing a full picture of particular practices. Determining the appropriateness and scope of any subsequent proposed rule will prove difficult.

The ANPR Recasts the FTC as a Legislature

The ANPR kickstarts the circumvention of the legislative process and the imposition upon the populace of the policy preferences of a majority of unelected FTC commissioners. The Supreme Court recently noted ''a particular and recurring problem [of] agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.'' [19] Apparently, the FTC is next up to the plate. Our Section 18 authority to regulate ''unfair or deceptive acts or practices'' [20] goes only so far; and the ANPR contemplates reaching well beyond, including to common business practices we have never before even asserted are illegal. Reading the FTC Act to provide the Commission with the ''sweeping and consequential authority'' [21] to mandate changes across huge swaths of the economy will test the limits of our congressional delegation.

The ANPR's many references to international and state privacy laws signal the majority's view that the scope of the rules passed by the unelected commissioners of an independent agency should be on par with statutes passed by elected legislators. Even as we vote, Congress is considering actively legislation concerning the very matters the ANPR purports to address.[22] I sincerely hope that this ill-advised process does not upset that very much needed one.

The ANPR colors well outside the lines of conduct that has been the subject of many (or, in a number of prominent cases, any) [23] enforcement actions, where real world experience provides a guide.[24] Unlike our December 2021 ANPR targeting fraudsters that impersonate the government, for example, the Commission does not have 20 years of cases covering the same conduct.[25] The Auto Rule NPRM issued last month also targeted conduct that was the basis of repeated Commission enforcement.[26]

This ANPR, meanwhile, attempts to establish the prevalence necessary to justify broad commercial surveillance rulemaking by citing an amalgam of cases concerning very different business models and conduct.[27] Under Section 18, the agency must show that the unfair acts or practices in question are prevalent, a determination that can only be made if the Commission has previously ''issued cease and desist orders regarding such acts or practices,'' or if it has any other information that ''indicates a widespread pattern of unfair or deceptive acts or practices.'' [28] Where the agency has little (or no) experience, prudence counsels in favor of investigation to explore costs and benefits and to determine illegality. The ANPR aims for regulation without even any experience, to say nothing of court decisions ratifying the application of Section 5 to the business conduct in question. As this process moves forward, the Commission would do well to keep in mind that ''[a]gencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.''' [29]

Take, for example, the ANPR's treatment of ''personalized'' or ''targeted'' advertising.[30] The majority seems open to banning—ahem, ''limiting''— targeted advertising. Limiting or banning targeted advertising will be a heavy lift for many reasons, not the least of which is that we have never brought a case alleging that targeted advertising is unfair. The Commission has brought cases where companies deceptively collected, used, or shared personal data for purposes including targeted advertising, but that is not the same.[31] Perhaps in recognition of these potential difficulties, the ANPR requests ideas on what potential legal theories might support limits on the use of automated systems in targeted advertising.[32]

Consider also the ANPR's discussion of consent, one of the traditional bedrocks of privacy policy. Whether notice and consent is the optimal approach to consumer privacy in every context is worthy of serious debate. Instead of discussing the merits and shortcomings of transparency and choice, the majority simply concludes that ''consent may be irrelevant.'' [33] The ANPR bolsters this view with claims that other privacy regimes are moving away from an emphasis on consent. Really? While there are certainly privacy laws that include data

[18] *Cf. In the matter of Flo Health, Inc.,* FTC File No. 1923133 (2021), *https://www.ftc.gov/legal-library/browse/cases-proceedings/192-3133-flo-health-inc* (Flo Health violated Section 5 by sharing consumer health information with data analytics providers, despite promising consumers that it would keep the data private).

[19] *West Virginia* v. *EPA,* 2022 WL 2347278 (June 30, 2022) (slip op. at 20).

[20] 15 U.S.C. 57a.

[21] *West Virginia* v. *EPA,* 2022 WL 2347278, at 17.

[22] 168 Cong. Rec. D823 (daily ed. July 20, 2022). *Cf. West Virginia* v. *EPA,* 2022 WL 2347278 at 20 (stating that the EPA's discovery of power to restructure the energy market ''allowed it to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself.'').

[23] Observers have, in the past, taken the FTC to task for trying to create ''law'' through settlements it reaches following investigations with private parties. *See, e.g.,* Justin (Gus) Hurwitz, *Data Security and the FTC's UnCommon Law,* 101 Iowa L. Rev. 955 (2016). That is a real concern. But those criticisms seem quaint in retrospect, as this ANPR contemplates banning or regulating conduct that hasn't even been the subject of enforcement.

[24] For example, while the Commission has explored facial recognition and automated decision-making in workshops and reports, it has never found that the use of facial recognition technology or automated decision-making themselves to be unfair. Despite this conspicuous lack of enforcement actions, if questions such as 38 or 60 of this ANPR are any indication, the Commission might rush straight to limiting or prohibiting their use. *See* ANPR at section IV, Q.38 and Q.60.

[25] The absence of this record itself undermines one of the traditional arguments for rules, *i.e.,* that enforcement efforts have not proven sufficient. *See, e.g.,* Trade Regulation Rule on Impersonation of Government and Businesses, 86 FR 72901 (Dec. 23, 2021), *https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses.*

[26] Motor Vehicle Dealers Trade Regulation Rule, 87 FR 42012 (July 13, 2022), *https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule.*

[27] *See, e.g., In re Craig Brittain,* FTC File No. 1323120 (2015), *https://www.ftc.gov/legal-library/browse/cases-proceedings/132-3120-craig-brittain-matter* (company solicited ''revenge'' porn and charged consumers to take down images); *U.S.* v. *AppFolio, Inc.,* Civ. Action No. 1:20-cv-03563 (D.D.C. 2020), *https://www.ftc.gov/legal-library/browse/cases-proceedings/1923016-appfolio-inc* (consumer reporting agency failed to implement reasonable procedures to ensure maximum possible accuracy of its tenant screening reports).

[28] 15 U.S.C. 57a(b)(3).

[29] *West Virginia* v. *EPA,* 2022 WL 2347278 at 19, (quoting E. Gellhorn & P. Verkuil, *Controlling Chevron-Based Delegations,* 20 Cardozo L. Rev. 909, 1011 (1999)).

[30] I recognize that all advertising is ''targeted'', why—for example—readers of Car & Driver in the pre-digital era saw ads for cars, driving gloves, and floor mats. In this dissent, I use the phrase ''targeted advertising'' to describe the ubiquitous conduct at issue in the ANPR, *i.e.,* advertising served on the web and through apps based on data collected about people.

[31] *See, e.g., U.S.* v. *OpenX Technologies, Inc.,* Civ. Action No. 2:21-cv-09693 (C.D. Cal. 2021), *https://www.ftc.gov/enforcement/cases-proceedings/1923019/openx-technologies-inc; In the Matter of Goldenshores Technologies, LLC, and Erik M. Geidl,* FTC File No. 1323087 (2014), *https://www.ftc.gov/legal-library/browse/cases-proceedings/132-3087-goldenshores-technologies-llc-erik-m-geidl-matter.*

[32] *See* ANPR section IV, Q.62.

[33] *Id.* at 6.

minimization requirements or restrict secondary uses of data, many still allow for consent. For example, the Children's Online Privacy Protection Act of 1998 requires parents to give verified parental consent before a business collects information from a child.[34] The European Union's General Data Protection Regulation (''GDPR'') allows businesses to process data if they have the consumer's consent, which must be freely given, specific, informed, and unambiguous.[35]

The ANPR appears skeptical that consumers can be trusted to make their own choices, seeking information on what ''commercial surveillance'' practices are illegal, ''irrespective of whether consumers consent to them.'' [36] Should the majority be thwarted in its quest to make consent passé, the ANPR contemplates at least having different consent standards for individuals ''in crisis'' or ''especially vulnerable to deception.'' [37] This is paternalistic to say the least: Heaven forfend adults make decisions and permit companies to use their data to serve them targeted ads. But even if you disagree with that view, the point is that a consequential decision to take away that choice from individuals—like many of the decisions that need to be weighed in creating a national privacy law—is best left to Congress. The FTC is not a legislature.

The ANPR also contemplates rewriting the Children's Online Privacy Protection Act (''COPPA'').[38] Consistent with its dismissal of consent as a legal basis for collecting data, its discussion of children and teens is hostile to the idea that parents can consent to the collection, use, or sharing of data about their children.[39] In enacting COPPA, with its explicit provision for verifiable parental consent, Congress determined that parents can make decisions about the collection and sharing of their children's personal data.[40] The FTC cannot and should not attempt to overrule Congress through rulemaking—or parents, who routinely have to make all sorts of decisions about our children.

To be fair, the ANPR raises the important issue of whether there should be more rules that protect the privacy of teenagers. COPPA only covers children under thirteen, and there are plenty of data privacy and security issues that impact youth ages 13 to 16 online. But here the ANPR is out of order. Just days ago, the Senate Commerce Committee considered legislation to amend COPPA, including to extend protections to minors up to age 16.[41] Congress is working on these answers. And, lest we forget, *so are we.* The privacy of children was a central concern of the social media 6(b)s, a project we have not yet completed.[42] The Commission also has had ongoing for years a review of the COPPA Rule. The Commission received over 170,000 comments upon it, the most of any request for input issued in the history of the agency. This ANPR threatens to supersede that process. We should first complete our homework on those projects before starting over the process of writing new rules.

The ANPR is FTC Overreach

The ANPR reaches outside the jurisdiction of the FTC. It seeks to recast the agency as a civil rights enforcer, contemplating policing algorithms for disparate impact without a statutory command.[43] This raises immediate concerns. First, do we have the authority? When Congress seeks to ban discrimination, it says so directly.[44] The FTC Act does not mention discrimination. Second, the civil rights laws Congress has adopted to fight discrimination delineate the bases upon which discrimination is illegal.[45] The FTC Act does not. Third, our antidiscrimination laws cover aspects of commerce where Congress has expressed concern about the impact of discrimination, for example housing, employment, and the extension of credit.[46] The FTC Act applies broadly to any unfair or deceptive act or practice in or affecting commerce. Finally, the FTC Act does not specify whether it is a regime of disparate treatment or disparate impact.

When determining what conduct violates an antidiscrimination law, all of these questions are critical. The FTC Act, which is not such a law, answers none of them. All of that raises the prospect of interpreting the FTC Act to bar disparate impact, including on bases that most would regard as perfectly reasonable or at the very least benign. So, for example, an algorithm resulting in ads for concert tickets being shown more often to music lovers would constitute illegal discrimination against those who are not music lovers. So might a dating app that uses an algorithm to help users find people of the same faith. Under the theory presupposed in the ANPR, such conduct would be illegal.

The ANPR seeks comment on whether the Commission might bar or limit the deployment of any system that produces disparate outcomes, irrespective of the data or processes on which the outcomes were based. (Is this what people mean when they say ''algorithmic justice''? [47]) This could very well mean barring or limiting any technology that uses algorithms to make decisions that apply to people. The ANPR requests comment on whether the FTC should ''forbid or limit the development, design, and use of automated decision-making systems that generate or otherwise facilitate outcomes that violate Section 5.'' [48] In other words, the Commission wonders if it should put the kibosh on the development of artificial intelligence. Stopping American innovation in its tracks seems to me neither to reflect the law nor to be sound public policy.

The Chair's statement suggests that, through this process, we can and should regulate the relations between

[34] Children's Online Privacy Protection Rule, 16 CFR 312.5, *https://www.govinfo.gov/content/pkg/CFR-2012-title16-vol1/pdf/CFR-2012-title16-vol1-sec312-5.pdf.*

[35] *See* Complete Guide to GDPR Compliance, *https://gdpr.eu/gdpr-consent-requirement/?cn-reloaded=1.*

[36] *See* ANPR at section IV, Q.76.

[37] *Id.* at section IV, Q.79.

[38] 15 U.S.C. 6502.

[39] I suppose there is some logic to the majority's view that if you can't consent to personalized advertising for yourself, then you can't consent for your children either. I disagree with both conclusions.

[40] 15 U.S.C. 6502.

[41] *See* Cristiano Lima, *Senate panel advances bills to boost children's safety online,* Wash. Post (July 27, 2022), *https://www.washingtonpost.com/technology/2022/07/27/senate-child-safety-bill/.*

[42] *See* Lesley Fair, FTC issues 6(b) orders to social media and video streaming services, Fed. Trade Comm'n Business Blog (Dec. 14, 2020), *https://www.ftc.gov/business-guidance/blog/2020/12/ftc-issues-6b-orders-social-media-and-video-streaming-services.*

[43] Illegal discrimination is pernicious, which is why we have statutes and agencies that protect consumers from being wrongly denied employment, housing, or credit due to a protected characteristic.

[44] *See, e.g.,* The Fair Housing Act, 42 U.S.C. 3601 *et seq.,* which prohibits discrimination in housing because of race, religion, sex, national origin, familial status or disability. The Age Discrimination in Employment Act, 29 U.S.C. 621 *et seq.,* prohibits employment discrimination against individuals aged 40 years or older.

[45] For example, Title VII of the Civil Rights Act of 1964, Public Law 88–352, prohibits employment discrimination ''because of such individual's race, color, religion, sex, or national origin.'' The Americans with Disabilities Act, 42 U.S.C. 12101, prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and access to state and local governments' programs and services.

[46] The FTC does enforce the Equal Credit Opportunity Act (''ECOA''), an antidiscrimination law covering the extension of credit. ECOA bars discrimination ''with respect to any aspect of a credit transaction'' on the basis of race, color, religion, national origin, sex, marital status, age, or because of receipt of public assistance. 15 U.S.C. 1691 *et seq.*

[47] Charles C.W. Cooke, *'Algorithmic Justice',* Nat'l Rev. (Apr. 26, 2022), *https://www.nationalreview.com/corner/algorithmic-justice/.*

[48] *See* ANPR at section IV, Q.60.

employers and employees where data are concerned.[49] The only related question in the ANPR asks ''[h]ow, if at all, should potential new trade regulation rules address harms to different consumers across different sectors.'' [50] That question does not seem designed to obtain the information that would be necessary to regulate employers' use of data concerning their employees, so perhaps the concept is off the table right out of the gate. But if not, I disagree with the premise that the FTC Act confers upon us jurisdiction to regulate any aspect of the employer-employee relationship that happens to involve data.[51]

But wait, there's more. The Commission is also apparently considering prohibiting social media, search, or other companies from owning or operating any business that engages in activities such as personalized advertising.[52] The ANPR seeks comment on whether we should limit finance, healthcare, and search services from cross-selling commercial products.[53] It contemplates requiring companies to disclose their intellectual property and trade secrets.[54] How any of these naked restraints on competition fall within our ken of policing ''unfair or deceptive acts or practices'' is completely unclear.

My preference would be that before we draft an ANPR, we be clear about the scope of our legal authority and that our proposal would be guided by those limitations. The ANPR looks instead like a mechanism to fish for legal theories that might justify outlandish regulatory ambition outside our jurisdiction and move far beyond where Commission enforcement has tread. Any ideas of how we might have the authority to ban targeted advertising? [55] Are we constrained by the First Amendment or Section 230 of the Communications Decency Act? [56] The ANPR is open to all creative ideas.[57]

The ANPR Gives Short Shrift to Critical Policy Issues Within its Scope

The ANPR lavishes attention on areas that have not been a focus of our enforcement and policy work, but shortchanges data security, one area ripe for FTC rulemaking. Over the past 20 years, the Commission has brought around 80 data security cases, hosted workshops, and done significant outreach to the business community on the topic of data security. A data security rule could protect consumers from the harms stemming from data breaches and provide businesses with greater clarity about their obligation to protect personal data. It could incentivize better data security by increasing the cost of bad security. I would welcome such a rulemaking if fashioned well. Instead of focusing on this important area, the ANPR gives data security short shrift. Six questions. That's it. A data security ANPR would surely have been more than six questions, a good indication that this ANPR is just not enough to make a data security rule. For example, our ANPR on impersonation fraud asked 13 questions about a far narrower topic. This is a missed opportunity to develop the record needed for a rule requiring companies to implement data security safeguards to protect consumers' personal data.

Perhaps the most shocking aspect of this ANPR is not what it contains, but what it leaves out: privacy. Missing from this document is any meaningful discussion about whether there should be different rules based on the sensitivity of data, a traditional area of privacy concern reflected in particular federal laws, which provide greater protection for data considered more sensitive, like health data, financial data, and data collected from children.[58] Almost as an afterthought, the ANPR asks ''which kinds of data'' might be subject to any potential rules, but there is no attempt at real engagement on the topic.[59] There is no question asking how ''sensitive data'' should be defined. The ANPR seeks information about whether the Commission should put restrictions on fingerprinting,[60] but is incurious about whether a rule should treat medical history and a social security number differently than an IP address or zip code.[61] ANPR questions focused on treating data differently based on sectors rather than on the sensitivity of the data itself fail to recognize that health data is collected and held across multiple sectors. One of the first steps in any serious attempt to develop a baseline privacy standard should be to determine what information is sensitive and might justify higher levels of protection.

In another departure from most privacy frameworks, the ANPR includes little discussion of how a rule should incorporate important principles like access, correction, deletion, and portability. The majority is so focused on justifying limiting or banning conduct now apparently disfavored that they spare no thought for how best to empower consumers. If you were hoping that the FTC would use its expertise and experience to develop rules that would give consumers greater transparency and control over their personal data, you must be very disappointed.

Conclusion

When adopting regulations, clarity is a virtue. But the only thing clear in the ANPR is a rather dystopic view of modern commerce. This document will certainly spark some spirited conversations, but the point of an ANPR is not simply to pose provocative questions. This is not an academic symposium. It is the first step in a rulemaking process, and the law entitles the public to some sense of where the FTC is going.

I would have supported an ANPR for a data security rule. I would have been more sympathetic to an ANPR that was focused on consumer privacy as reflected in our long record of enforcement and policy advocacy—say, a rule that, for example, would require transparency or that would, depending

[49] Statement of Chair Lina M. Khan Regarding the Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking (Aug. 11, 2022).

[50] ANPR at section IV, Q.12.

[51] The Chair's statement cites to the *Amazon Flex* case to support the notion that the Commission has authority to regulate the relationship between employers and employees. But that settled enforcement action concerned independent contractors. *See In the matter of Amazon.com, Inc. and Amazon Logistics, Inc.,* FTC File No. 1923123 (2021), *https://www.ftc.gov/legal-library/browse/cases-proceedings/1923123-amazon-flex.* While this Commissioner is no expert in labor and employment law, my understanding is that the distinction between independent contractors and employees is fundamental.

[52] *Id.* at section IV, Q.39.

[53] *Id.* at [Q.46].

[54] China probably approves. *Id.* at section IV, Q.86.

[55] *Id.* at section IV, Q.62.

[56] *Id.* at section IV, Q.63–64.

[57] Law enforcement agencies should stay within the clearly delineated bounds of the law. There are no points for creativity.

[58] *See* Health Breach Notification Rule, 16 CFR part 318; Gramm-Leach Bliley Act, Public Law 106–102, 112 Stat. 1338 (1999); Fair Credit Reporting Act, 15 U.S.C. 1681–1681x; Children's Online Privacy Protection Act, 15 U.S.C. 6501–6505.

[59] *See* ANPR at section IV, Q.10.

[60] While fingerprints would likely constitute sensitive data under a privacy rule, I will be interested to learn how fingerprinting itself is an unfair or deceptive practice under Section 5.

[61] The decision not to ask about how to define sensitive data is particularly odd given the agency's recent statements vowing to aggressively pursue cases involving the use and sharing of ''location, health, and other sensitive information.'' If the goal is to forbid the sharing of location data, in particular location data relating to reproductive health, a rule defining sensitive data would seem invaluable to that project. *See* Kristin Cohen, *Location, health, and other sensitive information: FTC committed to fully enforcing the law against illegal use and sharing of highly sensitive data,* Fed. Trade Comm'n Business Blog (July 11, 2022), *https://www.ftc.gov/business-guidance/blog/2022/07/location-health-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal-use.*

on the sensitivity of the information or the purposes for which it was collected, put some limits on the collection and use of consumer information. These ideas would be consistent with, among other things, Commission enforcement experience. I cannot support an ANPR that is the first step in a plan to go beyond the Commission's remit and outside its experience to issue rules that fundamentally alter the internet economy without a clear congressional mandate. That's not ''democratizing'' the FTC or using all ''the tools in the FTC's toolbox.'' It's a naked power grab. I dissent.

Dissenting Statement of Commissioner Christine S. Wilson

Throughout my tenure as an FTC Commissioner, I have encouraged Congress to pass comprehensive privacy legislation.[1] While I have great faith in markets to produce the best results for consumers, Econ 101 teaches that the prerequisites of healthy competition are sometimes absent. Markets do not operate efficiently, for example, when consumers do not have complete and accurate information about the characteristics of the products and services they are evaluating.[2] Neither do markets operate efficiently when the costs and benefits of a product are not fully borne by its producer and consumers—in other words, when a product creates what economists call externalities.[3] Both of these shortcomings are on display in the areas of privacy and data security. In the language of economists, both information asymmetries and the presence of externalities lead to inefficient outcomes with respect to privacy and data security.

Federal privacy legislation would provide transparency to consumers regarding the full scope of data collection, and how collected data are used, shared, sold, and otherwise monetized. In addition, a comprehensive privacy law would give businesses much-needed clarity and certainty regarding the rules of the road in this important area, particularly given the patchwork of state laws that is emerging. And Congressional action would help fill the emerging gaps in sector-specific approaches created by evolving technologies and emerging demands for information. Perhaps most importantly, a national privacy law would help curb violations of our civil liberties.[4]

While I have long been concerned about data collection and usage, the events of 2020 laid bare new dangers and served only to deepen my concerns. During that tumultuous year, I wrote and spoke on several occasions regarding pressing privacy and civil liberties issues.[5] In the face of continued Congressional inaction, I became willing to *consider* whether the Commission should undertake a Section 18 rulemaking to address privacy and data security. But even then, I emphasized that an FTC rulemaking would be vastly inferior to federal privacy legislation.[6] And I continue to believe that Congressional action is the best course.

I am heartened that Congress is now considering a bipartisan, bicameral bill that employs a sound, comprehensive, and nuanced approach to consumer privacy and data security. The American Data Privacy and Protection Act (ADPPA) rightly has earned broad acclaim in the House Committee on Energy and Commerce and the Subcommittee on Consumer Protection and Commerce, and is moving to a floor vote in the House.[7] I am grateful to Ranking Member Roger Wicker, Chairman Frank Pallone, Chair Jan Schakowsky, Ranking Member Cathy McMorris Rodgers, and Ranking Member Gus Bilirakis for their thoughtful work, and I hope to see this bill become a law. The momentum of ADPPA plays a significant role in my ''no'' vote on the advance notice of proposed rulemaking (ANPRM) announced today. I am gravely concerned that opponents of the bill will use the ANPRM as an excuse to derail the ADPPA.

While the potential to derail the ADPPA plays a large role in my decision to dissent, I have several other misgivings about proceeding with the ANPRM. First, in July 2021, the Commission made changes to the Section 18 Rules of Practice that decrease opportunities for public input and vest significant authority for the rulemaking proceedings solely with the Chair.[8] Second, the Commission is authorized to issue a notice of proposed rulemaking when it ''has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' [9] Many practices discussed in this ANPRM are presented as clearly deceptive or unfair despite the fact that they stretch far beyond practices with which we are familiar, given our extensive law enforcement experience. Indeed, the ANPRM wanders far afield of areas for which we have clear evidence of a widespread pattern of unfair or deceptive practices. Third, regulatory [10] and enforcement [11] overreach increasingly has drawn sharp criticism from courts. Recent Supreme Court decisions indicate FTC rulemaking overreach likely will not

[1] *See* Oral Statement of Commissioner Christine S. Wilson as Prepared for Delivery Before the U.S. House Energy and Commerce Subcommittee on Consumer Protection and Commerce (July 28, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592954/2021-07-28_commr_wilson_house_ec_opening_statement_final.pdf;* Oral Statement of Commissioner Christine S. Wilson Before the U.S. Senate Committee on Commerce, Science and Transportation (Apr. 20, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf;* Oral Statement of Commissioner Christine S. Wilson Before the U.S. Senate Committee on Commerce, Science and Transportation (Aug. 5, 2020), *https://www.commerce.senate.gov/services/files/25112CF8-991F-422C-8951-25895C9DE11D;* Oral Statement of Commissioner Christine S. Wilson as Prepared for Delivery Before the U.S. House Energy and Commerce Subcommittee on Consumer Protection and Commerce (May 8, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1519254/commissioner_wilson_may_2019_ec_opening.pdf.*

[2] Robert Pindyck & Daniel Rubinfeld, Microeconomics 625–626 (8th ed. 2017).

[3] *Id.* at 626.

[4] *See* Christine Wilson, Op-Ed, Coronavirus Demands a Privacy Law, Wall St. J., May 13 2020, available at *https://www.wsj.com/articles/congress-needs-to-pass-a-coronavirus-privacy-law-11589410686;* Christine S. Wilson, Privacy and Public/Private Partnerships in a Pandemic, Keynote Remarks Privacy + Security Forum (May 7, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1574938/wilson_-_remarks_at_privacy_security_academy_5-7-20.pdf;* Christine Wilson, Privacy in the Time of Covid-19, Truth On The Market (Apr. 15, 2020), *https://truthonthemarket.com/author/christinewilsonicle/.*

[5] *Id.*

[6] Oral Statement of Commissioner Christine S. Wilson as Prepared for Delivery Before the U.S. House Energy and Commerce Subcommittee on Consumer Protection and Commerce (July 28, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592954/2021-07-28_commr_wilson_house_ec_opening_statement_final.pdf.*

[7] Press Release, Bipartisan E&C Leaders Hail Committee Passage of the American Data Privacy and Protection Act (Jul. 20, 2022), *https://energycommerce.house.gov/newsroom/press-releases/bipartisan-ec-leaders-hail-committee-passage-of-the-american-data-privacy.*

[8] *See* Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips Regarding the Commission Statement on the Adoption of Revised Section 18 Rulemaking Procedures (July 9, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1591702/p210100_wilsonphillips_joint_statement_-_rules_of_practice.pdf* (detailing the changes to the Rules and concerns that the changes ''fast-track regulation at the expense of public input, objectivity, and a full evidentiary record.'').

[9] 15 U.S.C. 57a(b)(3).

[10] *West Virginia* v. *EPA,* 2022 WL 2347278 (June 30, 2022) (striking down EPA regulations as outside of the agency's Congressionally mandated authority).

[11] *AMG Capital Management, LLC* v. *FTC,* 141 S. Ct. 1341 (2021) (finding that the FTC exceeded its law enforcement authority under Section 13(b) of the FTC Act).

fare well when subjected to judicial review. And fourth, Chair Khan's public statements [12] give me no basis to believe that she will seek to ensure that proposed rule provisions fit within the Congressionally circumscribed jurisdiction of the FTC. Neither has Chair Khan given me reason to believe that she harbors any concerns about harms that will befall the agency (and ultimately consumers) as a consequence of her overreach.

While baseline privacy legislation is important, I am pleased that Congress also is considering legislation that would provide heightened privacy protections for children.[13] Recent research reveals that platforms use granular data to track children's online behavior, serve highly curated feeds that increase engagement, and (in some instances) push kids towards harmful content.[14] More broadly, the research reveals a ''catastrophic wave of mood disorders (anxiety and depression) and related behaviors (self-harm and suicide)'' among minors, and particularly teenage girls, who spend a significant amount of time on social media daily.[15] The Kids Online Safety Act makes particularly noteworthy contributions, and I applaud Senators Richard Blumenthal and Marsha Blackburn on their work.

I appreciate that my newest colleague, Commissioner Alvaro Bedoya, brings to the Commission deep experience in the field of privacy and data security and shares my concerns about protecting children online.[16] I look forward to working with him, FTC staff, and our fellow Commissioners to take constructive steps in this area, including advancing key research, heightening awareness, bringing enforcement actions, and concluding the Commission's ongoing review of the Children's Online Privacy Protection Act.

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[12] *See, e.g.,* Koenig, Bryan, *FTC's Khan More Worried About Inaction Than Blowback,* Law360 (Apr. 22, 2022), *https://www.law360.com/articles/1486611/ftc-s-khan-more-worried-about-inaction-than-blowback;* Scola, Nancy, *Lina Khan Isn't Worried About Going Too Far,* NY Magazine (Oct. 27, 2021), *https://nymag.com/intelligencer/article/lina-khan-ftc-profile.html.*

[13] Kids Online Safety Act, S.3663, 117th Congress (2021–22), *https://www.congress.gov/bill/117th-congress/senate-bill/3663/text;Children* and Teens' Online Privacy Protection Act, S.1628, 117th Congress (2021–22), *https://www.congress.gov/bill/117th-congress/senate-bill/1628/text; see also* Cristiano Lima, *Senate panel advances bills to boost children's safety online,* Wash. Post (Jul. 27, 2022), *https://www.washingtonpost.com/technology/2022/07/27/senate-child-safety-bill/.*

[14] *See, e.g.,* Testimony of Jonathan Haidt, Teen Mental Health is Plummeting, and Social Media is a Major Contributing Cause, Before the Senate Judiciary Committee, Subcommittee on Technology, Privacy, and the Law (May 4, 2022), *https://www.judiciary.senate.gov/imo/media/doc/Haidt%20Testimony.pdf.*

[15] *Id.*

[16] I have given several speeches discussing these concerns. *See* Christine S. Wilson, The FTC's Role in Supporting Online Safety (Nov. 21, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1557684/commissioner_wilson_remarks_at_the_family_online_safety_institute_11-21-19.pdf;* Christine S. Wilson, Opening Remarks at FTC Workshop: The Future of the COPPA Rule (Oct. 7, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1547693/wilson__ftc_coppa_workshop_opening_remarks_10-7-19.pdf; see also* Christine S. Wilson, Remarks at Global Antitrust Institute, FTC v. *Facebook (Dec. 11, 2019), https://www.ftc.gov/system/files/documents/public_statements/1557534/commissioner_wilson_remarks_at_global_antitrust_institute_12112019.pdf* (discussing, inter alia, my work with staff to secure the provisions of the settlement that provide heightened review for products targeted to minors).

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–AC05

Reopening of Comment Period and Hearing Regarding Proposed Amendment to Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

AGENCY: Employee Benefits Security Administration.

ACTION: Hearing announcement and reopening of the comment period.

SUMMARY: The Department of Labor's Employee Benefits Security Administration (EBSA) will hold a virtual public hearing regarding the proposed amendment to its prohibited transaction exemption filing and processing procedures. EBSA welcomes requests from the general public to testify at the hearing.

As discussed in the **DATES** section below, the Department of Labor (the Department) also is reopening the comment period regarding the proposed amendment to its prohibited transaction exemption filing and processing procedures.

DATES: The public hearing will be held on September 15, 2022, and (if necessary) September 16, 2022, via WebEx beginning at 9 a.m. EDT. Requests to testify at the hearing should be submitted to the Department on or before September 8, 2022. The Department will reopen the comment period for the proposed amendment on September 15, 2022. The Department will publish a **Federal Register** notice announcing that the hearing transcript is available on EBSA's web page and when the reopened comment period closes.

ADDRESSES: Please submit all comments and requests to testify concerning the proposed rule to the Office of Exemption Determinations through the Federal eRulemaking Portal at *www.regulations.gov* using Docket ID number EBSA–2022–0003. Instructions are provided at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Brian Shiker, Office of Exemption Determinations, EBSA, by phone at (202) 693–8552 (not a toll-free number) or email *shiker.brian@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background

This spring, the Department published a proposed amendment (the Rule) that would update its existing procedures governing the filing and processing of applications for administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act, the Internal Revenue Code, and the Federal Employees' Retirement System Act. The Rule was published in the **Federal Register** (87 FR 14722) on March 15, 2022.

The Department received 29 comment letters on the Rule before the public comment period ended on May 29, 2022. After consideration of the comments, including a written request for a public hearing, the Department has decided to hold a virtual public hearing to provide an opportunity for all interested parties to testify on material factual information regarding the Rule.

The hearing will be held via WebEx on September 15, 2022, and (if necessary) September 16, 2022, beginning at 9 a.m. EDT. It will be transcribed. Registration information to access and view the hearing will be available on EBSA's website: *www.dol.gov/agencies/ebsa.*

Instructions for Submitting Requests To Testify

Individuals and organizations interested in testifying at the public hearing must submit a written request to testify and a summary of their testimony by September 8, 2022. Requests to testify must include:

(1) the name, title, organization, address, email address, and telephone number of the individual who would testify;

(2) if applicable, the name of the organization(s) whose views would be represented;

(3) the date of the requestor's written comment on the Rule (if applicable); and

(4) a concise summary of the testimony that would be presented.

Any requestors with disabilities requiring special accommodations for their testimony should contact Mr. Brian Shiker after submitting their written request.

The Department will organize the hearing into several moderated panels. Presenters will be given 10 minutes to testify, and they should be prepared to answer questions regarding their testimony. EBSA will post an agenda containing the panel compositions and presentation times on *www.dol.gov/agencies/ebsa* no later than September 13, 2022.

EBSA may limit the number of presenters based on how many testimony requests it receives. In that event, EBSA will ensure that the broadest array of viewpoints on all aspects of the Rule are represented and will include in the public record all testimony summaries it receives.

Reopening of Comment Period

The Department will reopen the Rule's comment period beginning on the hearing date (September 15, 2022) until approximately 14 days after the Department publishes the hearing transcript on EBSA's web page. The Department will publish a **Federal Register** notice announcing that the hearing transcript is available on EBSA web page and when the reopened comment period closes.

All comments and requests to testify will be available to the public, without charge, online at *www.regulations.gov,* at Docket ID number: EBSA–2022–0003 and *www.dol.gov/ebsa.* They also will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210; however, the Public Disclosure Room may be closed for all or a portion of the reopened comment period due to circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus.

Warning to Commentors and Requestors: Please DO NOT submit any personal information you consider to be confidential or protected (such as your Social Security number or an unlisted phone number) or any confidential business information you do not want to be publicly disclosed on your comment, request to testify, and testimony summary. Please also be aware that the Federal eRulemaking Portal on *Regulations.gov* is an ''anonymous access'' system, meaning EBSA will not know your identity or contact information unless you provide it.

Signed at Washington, DC, this 15th day of August, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–17996 Filed 8–19–22; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0373; FRL–9765–01–R9]

Air Plan Revisions; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; partial withdrawal of proposed rule; withdrawal of proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of two revised rules and an approval of a rule recission to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from marine and pleasure craft coating operations and the coating of metals. The EPA previously proposed to fully approve these SIP revisions on the grounds that they satisfied the relevant requirements under the Clean Air Act (CAA or the Act). After the comment periods, the EPA identified a deficiency in the submittals that warrants a limited disapproval. Therefore, we are withdrawing our previously proposed approvals of these SIP revisions as they pertain to these rules, published in the **Federal Register** on May 20, 2021, and August 24, 2021, and now propose a limited approval and limited disapproval for these revisions into the California SIP.

DATES: As of August 22, 2022, the proposed approval of Rule 1107 in the proposed rule published on May 20, 2021 (86 FR 27344), and and the proposed rule published on August 24, 2021 (86 FR 47268), are withdrawn. Comments on this proposed limited approval and limited disapproval and approval must be received on or before September 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0373 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at *Lazarus.Arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules and rule rescission did the State submit?

Table 1 lists the rule revisions addressed by this proposal with the dates that they were amended or rescinded by the local air agency and submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1—SUBMITTED RULES

Local Agency	Rule No.	Rule title	Amended	Rescinded	Submitted
SCAQMD	1106	Marine and Pleasure Craft Coatings	5/3/2019		2/19/2020
SCAQMD	1106.1	Pleasure Craft Coating Operations		5/3/2019	2/19/2020
SCAQMD	1107	Coating of Metal Parts and Products	2/7/2020		7/24/2020

On August 19, 2020, the submittal for SCAQMD Rule 1106 and the rescission of Rule 1106.1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

On November 24, 2020, the EPA determined that the submittal for SCAQMD Rule 1107 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of SCAQMD Rule 1106 into the SIP on July 14, 1995 (60 FR 36227), and we approved SCAQMD Rule 1106.1 into the SIP on August 31, 1999 (64 FR 47392). The SCAQMD adopted revisions to the SIP-approved versions of these rules on May 3, 2019, and CARB submitted them to us on February 19, 2020.

We approved an earlier version of SCAQMD Rule 1107 into the SIP on November 24, 2008 (73 FR 70883). The SCAQMD adopted revisions to the SIP-approved version of this rule on February 7, 2020, and CARB submitted them to us on July 24, 2020.

C. What is the purpose of the submitted rules and rule rescission?

Emissions of VOCs contribute to the production of ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 1106 regulates VOC emissions from all marine and pleasure craft coating operations, including coatings for boats, ships and their appurtenances, buoys, and oil drilling rigs intended for the marine environment, and applies to any person who solicits or requires any other person to use a marine coating. The rule was amended to include pleasure craft coating operations, lower the VOC content limit of a number of existing coatings, and add five coatings to the specialty coating list. Rule 1106.1, Pleasure Craft Coating Operations, has been locally rescinded; however, all of the coatings limits, work practices, test methods and administrative aspects in Rule 1106.1 are now covered by Rule 1106.

Rule 1107 regulates VOC emissions from all metal coating operations. Rule 1107 was required to be updated in order to meet current reasonably available control technology (RACT) for sources covered by the 2008 Control Techniques Guidelines (CTG) for Miscellaneous Metal and Plastic Parts Coatings (MMPP). For example, the rule revision lowers its exemption requirement from 10 tons per year of potential emissions of VOC to the MMPP CTG specified total actual 2.7 tons of VOC per 12 month rolling period, per facility, as specified by the MMPP CTG.[1]

The EPA's technical support documents (TSD) have more information about the rules and rule rescission.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules and rule rescission?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOC in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SCAQMD regulates an ozone nonattainment area classified as Extreme for the 1997, 2008, and 2015 8-Hour Ozone National Ambient Air Quality Standards (40 CFR 81.305). Rule 1106 is covered by ''Control Techniques Guidelines for Shipbuilding and Ship Repair Operations'' (61 FR 44050, August 27, 1996), and ''Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008). Rule 1107 is covered by ''Control Techniques: Guidelines for Miscellaneous Metals and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008) and ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15, June 1978). Therefore, both rules must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Techniques Guidelines for Shipbuilding and Ship Repair Operations'' (61 FR 44050, August 27, 1996).
5. ''Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities'' (EPA 453/R–94–032, April 1994).
6. ''Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008).
7. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15, June 1978).

[1] ''Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008), page 3.

B. Do the rules and rule rescission meet the evaluation criteria?

Rule 1106 improves the SIP by establishing more stringent emission limits on some coating categories, clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and SIP revisions.

Rule 1107 improves the SIP by establishing more stringent emission limits on some coating categories, clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and SIP revisions.

The rescission of Rule 1106.1 prevents redundancy in the SIP because the requirements of Rule 1106.1 were added to Rule 1106 in order to make one rule that covered all aspects of Marine and Pleasure Craft Coatings.

Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

The following provisions in Rules 1106 and 1107 include references to a test method, ASTM D7767–11 (2018)—''Standard Test Method to Measure Volatiles from Radiation Curable Acrylate Monomers, Oligomers and Blends and Thin Coatings Made from Them,'' which is not approved by the EPA and therefore cannot be used to enforce a SIP approved rule. Thus, these provisions do not satisfy the requirements of section 110 and part D of the Act and prevent full approval of the rules.

Rule 1106, Marine and Pleasure Craft Coatings:

1. Section (c)(9) Definitions:''Energy Curable Coatings.''
2. Section (i)(1) Exemption: ''Energy Curable Coatings.''

Rule 1107, Coating of Metal Parts and Products:

1. Section (b)(15) Definition: ''Energy Curing Coatings.''
2. Section (e)(1)(C) Methods of Analysis: Determination of VOC Content: Thin Film Energy Curable.

D. EPA Recommendations To Further Improve the Rules

The relevant TSD includes recommendations to further improve Rule 1106 including:

1. Section (d) Requirements, Table of Standards, ''Metallic Heat Resistant Coating,'' is not in the 1996 Marine Coatings CTG. We suggest that it be removed.
2. Section (d) Requirements, Table of Standards, ''Elastomeric Adhesives,'' is not in the 1996 Marine Coatings CTG. We suggest that it be removed.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rules 1106 and 1107 and an approval of the recission of Rule 1106.1. Simultaneously, the EPA is withdrawing its August 24, 2021 proposed approval of Rule 1106 and rescission of Rule 1106.1 and its May 24, 2021 proposed approval of Rule 1107 based on the deficiencies described above. We will accept comments from the public on this proposal until September 21, 2022. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If we finalize these limited disapprovals, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval.

Additionally, a final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rules have been adopted by the SCAQMD, and the EPA's final limited disapproval would not prevent the local agencies from enforcing them. The limited disapprovals also would not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP, as discussed in a July 9, 1992 EPA memo on processing SIP submittals.[2]

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SCAQMD Rule 1106, rescission of SCAQMD Rule 1106.1 and SCAQMD Rule 1107 described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

[2] See *Processing of State Implementation Plan (SIP) Submittals* Memorandum from John Calgani, Director Air Quality Management Division, to EPA Regional Offices, July 9, 1992.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 15, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–17935 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433, 437, and 457

[CMS–2440–P]

RIN 0938–AU52

Medicaid Program and CHIP; Mandatory Medicaid and Children's Health Insurance Program (CHIP) Core Set Reporting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the requirements for mandatory annual State reporting of the Core Set of Children's Health Care Quality Measures for Medicaid and Children's Health Insurance Program (CHIP), the behavioral health measures on the Core Set of Adult Health Care Quality Measures for Medicaid, and the Core Sets of Health Home Quality Measures for Medicaid. This proposed rule would also establish compliance requirements.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 21, 2022.

ADDRESSES: In commenting, please refer to file code CMS–2440–P. Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2440–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2440–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Virginia Raney, (410) 786–6117, Children and Adults Health Care Quality Measurement

Sara Rhoades, (410) 786–4484, Health Home Quality Measurement

Candace Anderson, (410) 786–1553, Health Care Quality Measurement for Dual Eligible (Medicaid and Medicare) Beneficiaries

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Quality Measurement in Medicaid and CHIP

Medicaid was enacted in 1965 as Title XIX of the Social Security Act (the Act) to provide health coverage for certain groups of people with lower incomes. Over the ensuing years, coverage under Medicaid has been extended to additional low-income populations. In addition, in 1997, upon enactment of the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted August 5, 1997), the Children's Health Insurance Program (CHIP) was enacted as Title XXI of the Act. Today, Medicaid and CHIP provide health coverage to approximately 88 million beneficiaries, approximately half of whom are children (40.4 million).[1] Medicaid and CHIP provide

[1] March 2022 Medicaid and CHIP Enrollment data: *https://www.medicaid.gov/medicaid/national-*

Continued

health care for some of the most vulnerable Americans, including individuals with very low incomes, pregnant women and children, and people with physical, cognitive, mental, and other disabilities who require long term services and supports (LTSS).

Despite the significant role that Medicaid and CHIP play in America's health care system, this regulation would require—for the first time—States, the District of Columbia (DC) and territories to mandatorily report on measures of the quality of health care provided to Medicaid and CHIP beneficiaries. Until the reauthorization of CHIP in 2009 by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3, enacted February 4, 2009), there were no Federal requirements regarding quality measurement to assess the care delivered to beneficiaries. Some quality measurement occurred at the State-level, but there was wide variation in the reliability and completeness of the data, as well as the types of measures reported. Different States focused on different health domains, and significant differences existed in the amount of State resources directed toward quality measurement, the data collection systems and capabilities for measuring quality in each State, and each State's priorities for quality improvement.

Since the establishment of CHIP, participating States have been required to report annually on the operation of their CHIP State plan and progress in reducing the number of uninsured children under section 2108 of the Act. Section 2108 of the Act also requires States to report data about enrollee access to networks of care, such as access to primary and specialty services and care coordination, using quality and satisfaction measures included in the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.

CHIPRA expanded upon these initial requirements. Not only were State reporting requirements for CHIP enhanced, but CHIPRA also required the Federal government to begin monitoring the quality of care and health outcomes for children enrolled in Medicaid and CHIP. Section 401 of CHIPRA added new section 1139A to the Act, which required development of a Core Set of Children's Health Care Quality Measures for Medicaid and CHIP (Child Core Set) which could be voluntarily reported by States. Section 1139A of the Act directed the Secretary to publish for general comment an initial recommended core set of child health quality measures set based on existing quality of care measures for children not later than January 1, 2010.

To assist the Federal Government in establishing priorities for the development and advancement of the Child Core Set, section 1139A of the Act also directed the Secretary to consult with a variety of specific interested parties in developing the initial measures and to work with interested parties annually to update the measures. Following several rounds of review by the initial interested parties and comments from the public, CMS released the initial Child Core Set consisting of 24 measures in 2009, with voluntary State-level reporting to begin in FFY 2010.[2]

The importance of quality reporting was emphasized by Congress again in 2010 when section 2701 of the Affordable Care Act[3] established a new section 1139B of the Act, extending the measurement of health care quality to Medicaid eligible adults. Like the Child Core set, the initial Core Set of Adult Health Care Quality Measures for Medicaid (Adult Core Set) was designed to reflect the health needs of adults enrolled in Medicaid, with measures capturing cancer screenings and management of chronic conditions. While not required by statute, including separate CHIP enrollees in reporting on the Adult Core Set measures is encouraged; therefore, both Medicaid and CHIP populations are referenced in descriptions of the Adult Core Set (see additional discussion in section II.E. of this proposed rule). The initial Adult Core Set also included five behavioral health measures to capture use of preventive and treatment services for mental health and substance use disorders. CMS issued the initial Adult Core Set consisting of 26 quality measures in 2012, and voluntary reporting of these measures began in FFY 2013.[4]

Congress has continued to advance quality reporting in Medicaid and CHIP by extending the appropriations for Core Sets reporting on a regular basis. The Protecting Access to Medicare Act of 2014 (PAMA), (Pub. L. 113–93, enacted April 1, 2014), the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), (Pub. L. 114–10, enacted April 16, 2015) and the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act of 2017 (HEALTHY KIDS Act) (Pub. L. 115–120, enacted January 22, 2018) all directed funding to the continued development, submission, and reporting of health care quality measures in Medicaid and CHIP for the Child Core Set.[5]

This regulation would implement mandatory annual reporting of the Child Core Set and the behavioral health measures on the Adult Core Set using a standardized format, as required by section 50102 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123, enacted February 9, 2018) and section 5001 of the Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients (SUPPORT) for Patients and Communities Act (SUPPORT Act), (Pub. L. 115–271, enacted October 24, 2018).

B. Quality Measurement of the Medicaid Health Homes Benefits Under Sections 1945 and 1945A of the Act

In addition to requiring reporting on the Child Core Set and specified measures on the Adult Core Set, this proposed rule would establish reporting requirements for States that elect to implement one or both of the optional Medicaid health home benefits under sections 1945 or 1945A of the Act. Sections 1945 (added by section 2703 of the ACA and later amended by section 1006(a) of the SUPPORT Act) and 1945A (added by section 3 of the Medicaid Services Investment and Accountability Act of 2019)[6] give States options for implementing two different Medicaid health home State plan benefits. The section 1945 health home benefit is for Medicaid-eligible individuals with two or more chronic conditions, with at least one chronic condition and who are at risk for a second, or with at least one serious and persistent mental health condition. Chronic conditions are defined in section 1945(h)(2) of the Act to include mental health conditions, substance use disorders, asthma, diabetes, heart disease, and being overweight (body

medicaid-chip-program-information/downloads/march-2022-medicaid-chip-enrollment-trend-snapshot.pdf.

[2] Initial Child Core Set: *https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO11001.pdf.*

[3] The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rulemaking, the two statutes are referred to collectively as the ''Affordable Care Act'' or ''ACA.''

[4] Initial Adult Core Set: *https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib-01-04-12.pdf.*

[5] The HEALTHY KIDS Act was enacted as part of H.R. 195, the Fourth Continuing Appropriations for Fiscal Year 2018, **Federal Register** Printing Savings, HEALTHY Kids, Health-Related Taxes, and Budget Effects (Pub. L. 115–120).

[6] Public Law 116–16, enacted April 18, 2019.

mass index over 25).[7] The section 1945A health home benefit is for Medicaid-eligible children with medically complex conditions, as defined in section 1945A(i)(1) of the Act.[8] States were able to begin covering the section 1945 health home benefit on January 1, 2011. States will be able to begin covering the section 1945A health home benefit on October 1, 2022.

Under both of these optional Medicaid benefits, a health home is a designated provider (including a provider that operates in coordination with a team of health care professionals) or a health team that is selected to provide health home services by a person who is eligible for the optional benefit. See sections 1945(h)(3) and section 1945A(i)(3) of the Act. Sections 1945 and 1945A of the Act also define health home services similarly. Section 1945 health home services are defined at section 1945(h)(4) of the Act as comprehensive care management; care coordination and health promotion; comprehensive transitional care, including appropriate follow-up, from inpatient to other settings; patient and family support (including authorized representatives); referral to community and social support services, if relevant; and the use of health information technology to link services, as feasible and appropriate. Section 1945A(i)(4) of the Act defines health home services as comprehensive care management; care coordination, health promotion, and providing access to the full range of pediatric specialty and subspecialty medical services, including services from out-of-State providers, as medically necessary; comprehensive transitional care, including appropriate follow-up, from inpatient to other settings; patient and family support (including authorized representatives); referrals to community and social support services, if relevant; and use of health information technology to link services, as feasible and appropriate.

As a condition for receiving payment for section 1945 health home services, section 1945(g) of the Act requires section 1945 health home providers to report to the State, in accordance with such requirements as the Secretary shall specify, on all applicable measures for determining the quality of health home services. Additionally, section 1945(c)(4)(B) of the Act requires certain States with an approved substance use disorder (SUD)-focused section 1945 health home State plan amendment (SPA) to report to the Secretary on the following with respect to SUD-eligible individuals provided health home services under the SUD-focused health home SPA: (1) the quality of health care provided to these individuals, with a focus on outcomes relevant to the recovery of each such individual; (2) the access of these individuals to health care; and (3) the total expenditures of these individuals for health care. Section 1945(c)(4)(B) further provides that the Secretary shall specify all applicable quality measures that would be included in the reporting required under that provision. Per section 1945(c)(4)(B) of the Act, States must submit the required report at the end of the period of such [SPA]. CMS has interpreted this language to mean that the report should provide data relating to the enhanced Federal medical assistance percentage (FMAP) period available to the State under section 1945(c)(4) of the Act and that States should submit the report within 6 months after the enhanced FMAP period ends.[9] Apart from the one-time-only required report under section 1945(c)(4)(B) of the Act, section 1945 of the Act does not require States to submit quality measure reporting to CMS or the Secretary related to the section 1945 health home benefit. However, since 2013, CMS has encouraged States (including States subject to the one-time-only report specified at section 1945(c)(4)(B) of the Act) to report annually on a set of section 1945 health home quality measures (section 1945 Health Home Core Set).[10]

The new optional section 1945A health home benefit also requires providers of that benefit to report to States on quality measures as a condition of payment. As a condition of receiving payment for section 1945A health home services, section 1945A(g)(1)(B) of the Act requires section 1945A health home providers to report information to the State on all applicable measures for determining the quality of health home services provided by the provider, including, to the extent applicable, child health quality measures and measures for centers of excellence for children with complex needs developed under Title XIX, Title XXI, and section 1139A of the Act (which would include the Child Core Set). Additionally, unlike section 1945 of the Act, which requires States to report on quality measures to the Secretary only if the State is subject to section 1945(c)(4)(B) of the Act, section 1945A of the Act requires all States implementing that benefit to submit reports to the Secretary on a range of topics. Under section 1945A(g)(2)(A)(i) of the Act, these reports must include all information reported by providers to the State under section 1945A(g)(1) of the Act, including the quality measure reporting required under section 1945A(g)(1)(B) of the Act. CMS interprets the language in section 1945A(g)(2)(A)(i) of the Act to refer to reporting on core measures developed for purposes of evaluating the quality of section 1945A health home services, because that provision cross-references the language in section 1945A(g)(1)(B) of the Act that mentions quality measures developed under various provisions of the Act, including the Child Core Set.

CMS published an initial core set of section 1945 health home quality measures (section 1945 Health Home Core Set) on January 15, 2013, in SMD letter #13–001, regarding ''Health Home Core Quality Measures.'' In developing the initial section 1945 Health Home Core Set, we consulted with States considering implementing the section 1945 health home benefit, conducted technical assistance calls, presentations, and webinars, and worked with Federal partners, including the Office of the Assistant Secretary for Planning and Evaluation and the Substance Abuse and Mental Health Services Administration (SAMHSA). SMD letter #13–001 provided a recommended list

[7] On November 16, 2010, we issued State Medicaid Director (SMD) letter #10–024, which provided States with guidance on implementing the section 1945 health home benefit. See *https://www.medicaid.gov/federal-policy-guidance/downloads/SMD10024.pdf.*

[8] On August 1, 2022, we issued State Medicaid Director (SMD) letter #22–004, which provides States with guidance on implementing the section 1945A health home benefit. See *https://www.medicaid.gov/federal-policy-guidance/downloads/smd22004.pdf.*

[9] Under section 1945(c)(1) of the Act, State payments for section 1945 health home services provided during the first 8 fiscal year quarters that a section 1945 SPA is in effect are Federally matched at a 90 percent Federal Medical Assistance Percentage (FMAP). Section 1006(a) of the SUPPORT Act, ''Extension of Enhanced FMAP for Certain Health Homes for Individuals with Substance Use Disorders,'' amended section 1945(c) of the Act to permit an extension of this period of 90 percent FMAP for certain section 1945 health home SPAs for individuals with substance use disorders (SUD) for two additional quarters (such that there could be a total of 10 quarters for the 90 percent FMAP). CMS provided guidance to States about this amendment to section 1945 in a May 7, 2019, Center for Medicaid and CHIP Services (CMCS) Informational Bulletin (CIB), ''Guidance for States on the Availability of an Extension of the Enhanced Federal Medical Assistance Percentage (FMAP) Period for Certain Medicaid Health Homes for Individuals with Substance Use Disorders (SUD),'' *https://www.medicaid.gov/federal-policy-guidance/downloads/cib050719.pdf.* We released further guidance on the section 1945(c)(4)(B) reporting requirements in a CIB entitled ''New Reporting Measures for Substance Use Disorder (SUD)-Focused Health Homes'' on November 27, 2019, *https://www.medicaid.gov/federal-policy-guidance/downloads/cib112719.pdf.*

[10] *https://www.medicaid.gov/federal-policy-guidance/downloads/smd-13-001.pdf.*

of 8 core measures that were chosen because they reflected key priority areas such as behavioral health and prevention measures.[11] CMS also explained in that SMD letter that reporting on the section 1945 Health Home Core Set would be *voluntary* until regulations were promulgated to require it. However, to ease the reporting burden, all but one of the recommended measures was aligned with measures in the Adult Core Set.

Subsequent updates to the section 1945 Health Home Core Set have been made on an annual basis. In developing and updating the section 1945 Health Home Core Set, CMS has generally tried to align it with the Child and Adult Core Sets. In November 2019, CMS released a CIB, which added two additional measures specific to SUD-focused health home programs to the 2020 section 1945 Health Home Core Set on which States could consider reporting as part of the required reporting under section 1945(c)(4)(B) of the Act.[12]

One feature of the section 1945 Health Home Core Set that differs from the Child and Adult Core Sets is that States collect provider-specific data on health home program beneficiaries from providers as a condition of payment (per section 1945(g) of the Act) and then aggregate that data at the health home program (that is, SPA) level for reporting to CMS rather than reporting State-level data as is done for the Child and Adult Core Sets. States with multiple home health programs submit a separate report for each program to CMS. Program level reporting is necessary as a result of flexibilities in section 1945 of the Act, which allows States to provide health home services on a less than statewide basis, allowing coverage of section 1945 health home services to be targeted to specific geographic areas within the State.

This proposed rule would establish the following requirements for States electing to implement the benefit under sections 1945 or 1945A of the Act. CMS proposes to require States that have implemented the section 1945 and/or 1945A health home benefit to report annually on the mandatory measures in the section 1945 Health Home Core Set and/or a proposed section 1945A Health Home Core Set (depending on which of the two benefits the State has opted to cover), and to require their health home providers to report to the State on those measures. CMS proposes that annual CMS reporting guidance will provide information on specific measures for which reporting is mandatory for the section 1945 and section 1945A Health Home Core Sets (including any specific measures that would be mandatory for States with SUD-focused section 1945 health homes). For States covering the section 1945 health home benefit, this requirement would be based on section 1902(a)(6) of the Act, which requires State Medicaid agencies to make such reports, in such form and containing such information, as the Secretary may from time to time require, and to comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports. For measures specific to States with SUD-focused health home SPAs subject to section 1945(c)(4)(B) of the Act, this requirement would also be authorized by the language in section 1945(c)(4)(B) of the Act stating that the Secretary shall specify all applicable measures for determining quality for purposes of section 1945(c)(4)(B) of the Act, but the proposals do not otherwise address the reporting requirements under section 1945(c)(4)(B) of the Act. Requiring States to require their section 1945 health home providers to report to the State on the Health Home Core Set would be further supported by the language in section 1945(g) of the Act providing that section 1945 health home providers shall report to States on all applicable measures for determining the quality of section 1945 health home services, in accordance with such requirements as the Secretary shall specify. For States covering the section 1945A health home benefit, these requirements would be authorized by section 1945A(g)(1) and (2) of the Act (see discussion of those provisions above), as well as by section 1902(a)(6) of the Act. While this proposed rule addresses part of the reporting required under section 1945A(g)(2)(A) of the Act (specifically, the proposed rule would implement section 1945A(g)(2)(A)(i) of the Act), section 1945A(g)(2)(A) of the Act requires States to report to the Secretary on several additional topics that are not addressed in this proposed rule. CMS expects to provide information to States about the rest of the reporting requirements under section 1945A(g)(2)(A) of the Act in the future.

C. Building a System of Reporting To Improve the Quality of Care Delivered

Implementation of the Child, Adult, and section 1945 Health Home Core Sets represented a major step in the development of a national, evidence-based system for measuring and improving the quality of care delivered to Medicaid and CHIP beneficiaries. The Core Sets include measures that, taken together, may be used to estimate the overall national quality of health care provided to beneficiaries. For instance, through the Child Core Set, data are collected on the percentage of children who receive preventive dental services and through the Adult and section 1945 Health Home Core Sets, data are collected on the number of adult beneficiaries who have their blood pressure under control. The Core Sets also have the potential to assess changes in the quality of and access to health care provided by State Medicaid and CHIP programs over time, and to make comparisons across States and health home programs. For example, the Core Sets capture data on the numbers of child and adult beneficiaries who have been seen by a provider following a hospitalization for mental illness—follow-up care that is critical to improving health outcomes for individuals suffering from mental illness. The ability to assess the quality of and access to care furnished by State Medicaid and CHIP programs is critical given the large number of vulnerable Americans who receive coverage in Medicaid and CHIP and the significant Federal and State resources needed to fund these programs.

1. Development of Core Sets

To ensure that the measures included in the Core Sets reflect the needs of Medicaid and CHIP beneficiaries and provide the types of information necessary for true quality improvement, sections 1139A and 1139B of the Act establish a number of specific parameters for the development of these core sets. As described in section 1139A(b)(2) of the Act, the measures included in the Child Core Set measures must be, at a minimum: (1) evidence-based and risk-adjusted, (2) designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care; (3) designed to ensure that the data required for such measures is collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level; (4) periodically updated; and (5) responsive to the child health needs, services, and domains of health care quality described in sections 1139A(a)(6)(A) (i), (ii), and (iii) of the Act (that is, preventive health services, acute care, chronic health care services, clinical care, health care safety, and family user experience). Section 1139B(a) of the Act requires the Secretary to utilize similar parameters for establishing the Adult Core Set.

[11] *https://www.medicaid.gov/federal-policy-guidance/downloads/SMD-13-001.pdf.*

[12] *https://www.medicaid.gov/federal-policy-guidance/downloads/cib112719.pdf*

To ensure the continued relevance of the Core Sets and allow the measures to grow and change as the health care system changes, sections 1139A and 1139B of the Act require the Secretary to create a Pediatric Quality Measurement Program and a Medicaid Quality Measurement Program and establish an annual, consensus-based process for identifying gaps in existing measures and establishing priorities for the development and advancement of new measures to address these gaps. Section 1139A(b)(3) of the Act requires the Secretary to consult a broad range of interested parties, including States; pediatricians; children's hospitals; other primary and specialized pediatric health care professionals and dental professionals; providers that furnish health care to children and families in urban and rural medically underserved communities or who are members of distinct population sub-groups at heightened risk for poor health outcomes; national organizations representing children, including children with disabilities and children with chronic conditions; national organizations representing consumers and purchasers of children's health care; national organizations and individuals with expertise in pediatric health quality measurement; and voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence-based measures of health care. Section 1139A(b)(5) of the Act directs the Secretary, beginning no later than January 1, 2013, and annually thereafter to publish recommended changes to the core measures described in section 1139A(a) of the Act that shall reflect the testing, validation, and consensus process for the development of pediatric quality measures described in paragraphs (1) through (4) of section 1139A(b) of the Act. Section 1139B(b)(5)(B) of the Act requires that the Secretary engage in a comparable process to annually update the Adult Core Set.

The initial section 1945 Health Home Core Set was established in 2013 as a recommended set of health care quality measures for assessing the section 1945 health home service delivery model. CMS established the initial section 1945 Health Home Core Set quality measures for Medicaid-eligible children and adults following consultation with Federal partners and States considering health homes, technical assistance calls, presentations, and webinars. CMS selected the recommended core set of health home measures because they reflect key priority areas such as behavioral health and preventive care; and because they aligned with the initial Adult Core Set, the Medicaid Electronic Health Record (EHR) incentive program ''Meaningful Use'' measures, and with the National Quality Strategy. CMS has updated the section 1945 Health Home Core Set annually since 2013, and in 2021 CMS established a Health Home Annual Review Workgroup to align this update process with how CMS updates the Child and Adult Core Sets (as further discussed below). The updates have generally reflected the same considerations and followed the same process as applied to the development of the initial set.

We have worked diligently with States and other interested parties through the formation of a joint Child and Adult Core Set Annual Review Workgroup to implement the statutory requirements and to ensure that measures in the Core Sets are meaningful for States and interested parties, feasible for State-level reporting, and represent minimal additional burden.[13] In 2021, we established a separate Health Home Annual Review Workgroup following the same structure and guidelines as the workgroup for the Child and Adult Core Sets, to develop and update section 1945 and section 1945A Health Home Core Sets. The joint Child and Adult Core Set Annual Review Workgroup and the Health Home Annual Review Workgroup (''Workgroups'') are convened annually to develop recommendations on how to revise, strengthen, and improve the applicable Core Sets measures, and every year the Workgroups' recommended changes are published for public comment. All meetings are open to the public, and public comment is invited during each meeting.

Workgroup members are able to recommend measures for addition or removal from the core sets.[14] [15] The measures that are recommended for addition need to meet criteria that include whether the measure has detailed technical specifications that enable production at the State-level or health home program level (as appropriate), and are available free of charge for State Medicaid and CHIP programs; and whether the measure has been tested or is currently in use by a State Medicaid or CHIP program. Measures that meet the criteria are presented for consideration at Workgroup meetings. A recommendation for addition or removal of a measure requires an affirmative vote from at least two-thirds of eligible Workgroup members. When making recommendations, the Workgroups are asked to balance a number of considerations including the technical feasibility of measures, the desirability of measures for Medicaid and CHIP interested parties, and the operational viability for States and to focus on measures that meet all of them. In considering whether a new measure would meet the needs of interested parties and provide meaningful feedback, the Workgroups may consider how a measure would contribute to estimating the overall national quality of health care in Medicaid and CHIP together with other Core Set measures, whether it would provide useful and actionable results to drive improvement in care delivery and health outcomes, and whether it would address a strategic performance measurement priority. Other considerations evaluated by the Workgroups include alignment with measures used by other CMS and HHS programs and whether the prevalence of the condition or outcome being measured will produce meaningful and reliable results across States or health home programs (for example, are there enough beneficiaries with a specific medical diagnosis to allow a State to report on measures related to that diagnosis without jeopardizing the privacy of individual beneficiaries).

Following each Workgroup meeting, a draft report summarizing the Workgroup recommendations is published for public comment. The public comments are then incorporated into the final report for each Workgroup, which is submitted to CMS.[16] CMS then reviews the final report and obtains additional input from other Federal programs and States regarding priority health topics, areas for future measure development, and measure alignment across programs wherever possible, before making a final decision on which recommendations to accept. CMS announces the annual updates through a CIB (a combined CIB for the Child and Adult Core Sets and a separate CIB for the section 1945 Health Home Core Set), which is also available on *Medicaid.gov*.

2. Strengthening Voluntary Reporting by States

State reporting on both the Child and Adult Core Sets under sections 1139A

[13] Annual Review and Selection Process: *https://www.medicaid.gov/medicaid/quality-of-care/downloads/annual-core-set-review.pdf.*

[14] Child and Adult Core Sets Annual Report: *https://www.mathematica.org/features/maccoresetreview.*

[15] Health Home Core Set Annual Review: *https://www.mathematica.org/features/hhcoresetreview.*

[16] The public comment period for the Annual Workgroup report is 30 days.

and 1139B of the Act, respectively, and on the specific measures in the section 1945 Health Home Core Set, has been voluntary since the inception of these Core Set reporting programs. For almost a decade we have worked closely with every State to improve annual reporting of measures. The number of measures voluntarily reported to CMS has increased every year, with the majority of States now reporting on at least one measure from the Child and Adult Core Sets.

To effectuate meaningful quality improvement both within and across States, it is essential for States not only to report on the Core Sets measures, but to report on them in a clear and consistent manner. Sections 1139A(a)(4) and 1139B(b)(3) of the Act require the Secretary to develop a standardized format and reporting procedures for reporting of the Child and Adult Core Sets. Section 1945(g) of the Act provides that section 1945 health home providers must report quality measures to the State in accordance with such requirements as the Secretary shall specify. Section 1945(c)(4)(B) of the Act provides that the Secretary shall specify all applicable measures for quality reporting required under that provision. Section 1945A(g)(2)(A) of the Act provides that States with an approved section 1945A SPA must report certain information to the Secretary, including quality measures reported to the State under section 1945A(g)(1)(B) of the Act by section 1945A health home providers, in such form and manner determined by the Secretary to be reasonable and minimally burdensome. In addition, section 1902(a)(6) of the Act requires State Medicaid agencies to make such reports, in such form and containing such information, as the Secretary may from time to time require.

Each year, we publish updated reporting guidance for the Child, Adult, and section 1945 Health Home Core Sets, which includes a summary of updates, as well as updated reporting tools, technical specifications and resource manual, data quality checklist, and measurement period table. However, considering the voluntary nature of State reporting, we have accepted reporting that does not comply with the reporting guidance, and we note in our annual reporting where States have deviated from measure specifications. After the section 1945A Health Home Core Set is developed, CMS also expects to provide annual updates and other information about this core set through annual reporting guidance.

We publicly report individual measures when 25 or more States report on that Child or Adult Core Sets measure using our published reporting guidance and the data meets standards for data quality. The first year of State reporting was FFY 2010 for the Child Core Set and FFY 2013 for the Adult Core Set. In the first year of Child Core Set reporting (FFY 2010), we publicly reported five measures. In FFY 2014, the first year of public reporting for the Adult Core Set, we reported 10 Adult Core Set measures and 19 Child Core Set measures. In the most recent reporting year (FFY 2020), 21 of the 24 Child Core Set measures and 28 of the 33 Adult Core Set measures met our threshold for public reporting of State-specific results.[17] [18]

Despite these improvements, however, not all measures meet the public-reporting threshold of 25 States and, even those that do, remain unreported for many States. The average State is reporting 73 percent of Child Core Set and 67 percent of Adult Core Set measures, the median number of measures reported by States for FFY 2020 is 17.5 for the Child Core Set and 22 for the Adult Core Set. Several important measures remain completely unreported, such as Screening for Depression and Follow-Up Plan (on both the Child and Adult Core Sets). In addition, not all States adhere to the technical specifications for the measures developed by CMS, and most States do not report measures for all their beneficiaries. State variation in reporting has left some populations behind in quality improvement efforts and has made meaningful comparisons across States difficult.

As of June 2022, 19 States and D.C. have 34 different approved health home programs (that is, SPAs) targeting different populations. We publicly report all section 1945 Health Home measures voluntarily submitted by States, if they are reported by at least 15 section 1945 health home programs using our published reporting guidance and the data meets standards for data quality, following data suppression rules when applicable. Of the 37 health home programs on which CMS encouraged States to report the section 1945 Health Home Core Set measures for FFY 2020 based on program effective date, States voluntarily reported at least one measure for 34 of those programs.[19] For each reporting cycle since FFY 2017, both the number of health home programs that CMS encouraged States to report on and the number of health home programs for which States voluntarily reported at least one section 1945 Health Home Core Set measure have increased. In the most recent reporting data available, FFY 2020, the median number of measures reported by States were 9 (of 12) measures for the section 1945 Health Home Core Set. One example of information ascertained from voluntary Health Home Core Set reporting is that emergency department visits decreased significantly between FFY 2017 and FFY 2020 on the ''Ages 18 to 64'' rate, the ''Age 65 and older'' rate, and the total rate among those States that reported these rates all three years, representing better performance because lower rates are better on this measure.

This data collection and reporting process is a critical foundation to driving improvement in the quality of care for Medicaid and CHIP beneficiaries, and we have worked extensively with States to encourage the use of Core Sets measure results to improve the quality of care delivered to their beneficiaries. We provide ongoing technical assistance to States to improve measure reporting, measure performance, quality of care delivered to beneficiaries, and the use of measures to gauge the effectiveness of quality improvement efforts. One-on-one technical assistance is offered directly to States, and CMS regularly hosts webinars and learning collaboratives in specific quality areas, such as oral health care, maternal and infant health, behavioral health, primary care and prevention, and care of chronic conditions. Through learning collaboratives, State Medicaid and CHIP agencies and their State partners have the opportunity to expand their knowledge of evidence-based interventions; improve their ability to conduct quality improvement projects; and engage in State-to-State learning on topics identified by States and other interested parties as most critical to

[17] Child Core Set Reporting: *https://www.medicaid.gov/medicaid/quality-of-care/performance-measurement/adult-and-child-health-care-quality-measures/childrens-health-care-quality-measures/index.html.*

[18] Adult Core Set Reporting: *https://www.medicaid.gov/medicaid/quality-of-care/performance-measurement/adult-and-child-health-care-quality-measures/adult-health-care-quality-measures/index.html.*

[19] Section 1945 health home programs that have been in effect and implemented for a minimum of 6 months are encouraged to report on the 1945 Health Home Core Set annually to CMS.

serving their beneficiaries, including asthma, oral health, and maternal and infant health.[20] [21] [22] [23] Core Sets reporting is also used to develop CMS's Medicaid and CHIP Scorecard; to measure the quality of care authorized through State section 1115 demonstration projects and Center for Medicare and Medicaid Innovation models focused on Medicaid; and in Medicaid managed care quality work to monitor plans' performance and drive improvement.[24] [25]

D. Shifting From Voluntary to Mandatory Reporting

In 2018, two bills were signed into law that mandate State reporting of the Child Core Set and the behavioral health measures on the Adult Core Set. These laws help address the limitations of voluntary reporting and significantly strengthen the ability of the Core Sets to drive quality improvements for Medicaid and CHIP beneficiaries nationwide.

First, section 50102(b) of the Bipartisan Budget Act of 2018 added a new subparagraph (B) to section 1139A(a)(4) of the Act to mandate annual reporting of the Child Core Set beginning with the annual State report on fiscal year 2024. Specifically, section 1139A(a)(4)(B) of the Act states that beginning with the annual State report on fiscal year 2024, the Secretary shall require States to use the initial core measurement set and any updates or changes to that set to report information regarding the quality of pediatric health care under titles XIX and XXI. Additionally, section 1139A(a)(4)(B) of the Act requires, once mandatory reporting begins, that States submit such information using the standardized format for reporting information and procedures developed by CMS in consultation with States in accordance with section 1139A(a)(4)(A) of the Act.

Second, the SUPPORT Act, added a new subparagraph (B) to section 1139B(b)(3) of the Act, to make mandatory the annual reporting of behavioral health measures in the Adult Core Set. The SUPPORT Act requirement also becomes effective beginning with the annual State report on fiscal year 2024. Per section 1139B(b)(3)(B) of the Act, States are required to report on all behavioral health measures included in the core set of adult health quality measures and any updates or changes to such measures, and as with the Child Core Set, reporting of the behavioral health measures must be submitted using the standardized format for reporting information and procedures developed by CMS in consultation with States.

As discussed previously in this proposed rule, section 1945 of the Act, as initially enacted in 2010, required section 1945 health home providers to report information to States about implementation of the section 1945 health home benefit, but did not require States to submit reports to CMS about implementation of the section 1945 health home benefit. In 2018, the SUPPORT Act made State reporting of certain information about certain SUD-focused section 1945 health homes mandatory. Section 1945A of the Act also requires certain State reporting for that health home benefit. As discussed previously in this proposed rule, we are now proposing to require States that have opted to implement the section 1945 or section 1945A health home benefit to report to the Secretary on any measures identified by the Secretary through guidance as mandatory in either a section 1945 Health Home Core Set or a new section 1945A Health Home Core Set, or both (depending on which health home benefit(s) the State has elected to implement). The section 1945 Health Home Core Set would include measures that are required for State reporting under section 1945(c)(4)(B) of the Act for certain SUD-focused health homes. To enable States to provide these reports to CMS, we are also proposing to require States to require their health home providers to report on these measures to the State. These requirements would be authorized under section 1902(a)(6) of the Act, section 1945(c)(4)(B) and (g) of the Act, and section 1945A(g) of the Act, as discussed previously in this proposed rule. By establishing requirements for reporting on both Health Home Core Sets concurrently with the requirements for reporting on the Child and behavioral health measures in the Adult Core Sets, we can significantly improve alignment between the measures under all these quality reporting programs and ensure that States do not have to navigate multiple reporting processes and standards for these measures.

II. Provisions of the Proposed Rule

A. Basis, Scope, Purpose and Applicability

This proposed rule would implement sections 1139A and 1139B of the Act, as amended, which set forth requirements for mandatory reporting on a core set of measures which assess the quality of care provided to child beneficiaries in Medicaid and CHIP and the quality of behavioral health care for Medicaid eligible adults. In Medicaid, the Adult and Child Core Set proposals are also authorized under section 1902(a)(6) of the Act, which requires State Medicaid agencies to make such reports, in such form and containing such information, as the Secretary may from time to time require. This proposed rule would help to fulfill the Secretary's obligation to establish and update a Child Core Set and Adult Core Set and to establish a standardized format and reporting procedures for States to use when reporting on these Core Sets and to publicly report this data. The proposals for the Health Home Core sets would implement sections 1902(a)(6), 1945(c)(4)(B), 1945(g), and 1945A(g) of the Act, which require or (in the case of section 1902(a)(6) of the Act) authorize the Secretary to require State reporting of health home quality measures and to set form and manner requirements for that reporting, and which also give the Secretary the authority to require States to require their health home providers to report on the same measures. The proposed rule would establish requirements for section 1945 health home quality measure reporting by providers, consistent with section 1945(g) of the Act, and would establish a process through which the Secretary would establish the form and manner of State reporting to CMS on section 1945A health home quality measures under section 1945A(g)(2)(A)(i) of the Act. Proposed § 437.1(a) and (b) would set forth the basis and scope for these proposed requirements. The proposed rule would also set forth the process through which CMS would develop and update the Child Core Set, Adult Core Set, and the Health Home Core Sets (sections 1945 and 1945A) and the process through which CMS would establish requirements that State agencies would have to meet when reporting on the measures included in these Core Sets.

The Child, Adult, and both Health Home Core Sets have tremendous

[20] Quality Improvement Initiatives: *https://www.medicaid.gov/medicaid/quality-of-care/quality-improvement-initiatives/index.html.*

[21] Asthma Learning Collaborative: *https://www.medicaid.gov/medicaid/quality-of-care/quality-improvement-initiatives/improving-asthma-control-learning-collaborative/index.html.*

[22] Oral Health Learning Collaborative: *https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/advancing-prevention-and-reducing-childhood-caries-medicaid-and-chip-learning-collaborative/index.html.*

[23] Maternal and Infant Health Quality Initiative: *https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html.*

[24] Scorecard: *https://www.medicaid.gov/state-overviews/scorecard/state-health-system-performance/index.html.*

[25] Medicaid Managed Care Quality: *https://www.medicaid.gov/medicaid/quality-of-care/medicaid-managed-care-quality/index.html.*

potential to assist States in monitoring and improving the quality of care provided to Medicaid and CHIP beneficiaries. As States see the actual impacts of the care provided to their beneficiaries and to compare the health outcomes of their beneficiaries to the outcomes achieved in other States, and for other Health Homes programs, their successes and the areas in which they need to improve will become clearer. As certain Medicaid and CHIP programs begin to stand out as models of care in specific areas, other States will be able to learn from them and adopt new models that are likely to improve the quality of care provided to their beneficiaries as well. With this in mind, we propose at § 437.1(c)(1) to establish the purpose of the Child and Adult Core Sets. The purpose of the Medicaid and CHIP Child Core Set and the Medicaid Adult Core Set is to measure the overall national quality of care for beneficiaries, monitor performance at the State-level, and improve the quality of health care. At § 437.1(c)(2), we propose to establish the purpose of the section 1945 and section 1945A Health Home Core Sets. The purpose of these Core Sets is to measure the overall program quality of health home services for Medicaid beneficiaries enrolled in a health home program under section 1945 or 1945A of the Act, monitor the impact of these optional State plan benefits, monitor performance of these benefits at the program level, and improve the quality of health care. We believe these stated purposes would set a high bar for effective measurement of the quality of health care provided to millions of Americans every year and that resulting improvements in the health and well-being of Medicaid and CHIP beneficiaries would lead to better health for the entire nation.

Applicability of the provisions in subpart A of part 437 differs based on the statutory basis for the Core Set reporting. The requirements for the Child and Adult Core Sets are described in Title XI of the Act, while the requirements for the Health Home Core Sets are described in Title XIX of the Act, and for purposes of section 1945A of the Act should include, to the extent applicable, child health quality measures and measures for centers of excellence for children with complex needs developed under Titles XIX and XXI and section 1139A of the Act. Section 1101(a)(1) of the Act defines a State, for purposes of Title XI, to include D.C., the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. For purposes of Title XIX, American Samoa and the Mariana Islands are also included in the definition of State under section 1101(a) of the Act. Therefore, we propose at § 437.1(d)(1) that the requirements for Child and Adult Core Sets reporting would apply to the 50 States, D.C., Puerto Rico, the Virgin Islands, and Guam; and throughout the proposed rule the term ''States'' is used to reflect these entities when CMS is referring to the Child and Adult Core Sets. American Samoa and the Mariana Islands could, but would not be required to, report Child and Adult Core Sets measures. We propose at § 437.1(d)(2) that the requirement for reporting on one or both of the Health Home Core Sets would apply to any State (as defined under section 1101 of the Act for purposes of Title XIX) with an approved Medicaid Health Home SPA under section 1945 or 1945A of the Act. When CMS refers to a ''State'' when discussing the Health Home Core Sets in this proposed rule, this is the definition that CMS means. States that implement the section 1945 health home benefit would report on the section 1945 Health Home Core Set, States that implement the section 1945A health home benefit would report on the section 1945A Health Home Core Set, and States that implement both benefits would report on both Health Home Core Sets. For all Child, Adult, and Health Home Core Sets measures, proposed § 437.1(e) would provide that the requirements in subpart A apply no later than State reporting on the 2024 Core Sets by December 31, 2024.

B. Definitions

Proposed § 437.5 would establish definitions related to quality measurement and reporting. We propose to define the terms ''Child Core Set,'' ''Adult Core Set,'' ''Core Sets,'' ''Health Home Core Sets,'' ''1945 Health Home Core Set,'' and ''1945A Health Home Core Set,'' to include the health care quality measures established and updated annually by the Secretary through subregulatory guidance, as described in proposed § 437.10(a) and discussed in section I.C.1. of this proposed rule.

We also propose to define ''behavioral health,'' and ''behavioral health measure'' at § 437.5. Section 1139B(b)(5)(C) of the Act requires States to report on all behavioral health measures included in the core set of adult health quality measures and any updates or changes to such measures.[26] However, the statute does not define ''behavioral health'' or ''behavioral health measures.'' We currently do not have a definition of behavioral health for use in the Adult Core Set for voluntary reporting and not all measures that are relevant to behavioral health are included in the behavioral health domain of the Adult Core Set, because such measures span multiple domains. For example, the ''Screening for Depression and Follow-up Plan'' measure is in the ''Primary Care Access and Preventative Care'' domain on the Adult Core Set because it is provided in the primary care setting. However, we believe this is clearly a behavioral health measure as well.

While the definitions differ slightly, other Department of Health & Human Services (HHS) agencies generally define behavioral health as including mental health and the identification of and treatment for SUD. In its criteria for certification of Certified Community Behavioral Health Clinics, SAMHSA defines behavioral health as ''the promotion of mental health, resilience and wellbeing; the treatment of mental and substance use disorders; and the support of those who experience and/or are in recovery from these conditions, along with their families and communities.'' [27] The Public Health Service Act (Pub. L. 78–410) requires health centers under the Health Resources & Services Administration's (HRSA) Bureau of Primary Health Care to provide additional health services . . . including (A) behavioral and mental health and substance use disorder services.[28] The Indian Health Care Improvement Act, the underlying authority for the Indian Health Service (IHS) provides, ''(A) In general the term ''behavioral health'' means the blending of substance (alcohol, drugs, inhalants, and tobacco) abuse and mental health disorders prevention and treatment for the purpose of providing comprehensive services.'' [29]

The only CMS regulation that currently defines ''behavioral health'' can be found in the requirements for long term care facilities at § 483.40, relating to the conditions of participation for skilled nursing facilities participating in Medicare and nursing facilities participating in

[26] Section 1139B of the Act: *https://www.ssa.gov/OP_Home/ssact/title11/1139B.htm,* Public Law 115–271, section 5001, amended paragraph (3) to include subparagraph (B). Effective October 24, 2018.

[27] Definition of behavioral health for Certified Community Behavioral Health Clinics: *https://www.samhsa.gov/sites/default/files/programs_campaigns/ccbhc-criteria.pdf.*

[28] Health Center Program Statute: Section 330 of the Public Health Service Act (42 U.S.C. 254b).

[29] Indian Health Services statute: 25 U.S.C. 1603 (2): *https://www.law.cornell.edu/uscode/text/25/1603#2_A, https://www.govinfo.gov/content/pkg/USCODE-2011-title25/pdf/USCODE-2011-title25-chap18.pdf.*

Medicaid. This regulation defines ''behavioral health'' as encompassing a resident's whole emotional and mental well-being, which includes, but is not limited to, the prevention and treatment of mental and substance use disorders. CMS resources for behavioral health of American Indians and Alaska Natives similarly explain that, ''Behavioral health includes the emotions and behaviors that affect your overall well-being. Behavioral health is sometimes called mental health and often includes substance use.'' [30]

While few programs appear to have formal definitions codified in statute, regulations or otherwise, there appears to be a general consensus that behavioral health services include services to address mental health conditions as well as SUDs. Some extend further to embrace psychological or emotional well-being. As such, at § 437.5, we propose definitions of ''behavioral health'' and ''behavioral health measure'' for purposes of quality reporting by Medicaid and CHIP agencies that are derived from the definition at § 483.40. We propose to define ''behavioral health'' as a beneficiary's whole emotional and mental well-being, which includes, but is not limited to, the prevention and treatment of mental disorders and substance use disorders. A ''behavioral health measure'' would be defined as a quality measure that could be used to evaluate the quality of and improve the health care provided to beneficiaries with, or at-risk for a behavioral health disorder(s).

C. The Child, Adult, and Health Home Core Sets

As discussed in section I.A. of this proposed rule, the Secretary published the initial Child and Adult Core Sets in 2009 and 2012 respectively. These initial core sets were developed with input from States and interested parties and comments from the public. The first updates to the Core Sets were published in 2013 (Child Core Set) and 2014 (Adult Core Set). After receiving input from States and other interested parties, CMS has updated the Core Sets annually through a CIB.

The section 1945 Health Home Core Set was initially introduced in 2013, in SMD letter #13–001. Prior to the 2021 implementation of the Health Home Annual Review Workgroup process, CMS updated the 1945 Health Home Core Set annually through a web posting, based on agency wide efforts to align quality measures across CMS programs.[31] Currently, updates to the 1945 Health Home Core Set are conducted through an Annual Review Workgroup process that aligns with how similar workgroups are used to develop updates to the Child and Adult Core Set. Annual updates to the 1945 Health Home Core Set are currently developed through the Health Home Annual Review Workgroup review process and CMS releases the updates through a CIB. CMS anticipates developing and updating the section 1945A Health Home Core Set through this same workgroup process.

In revising sections 1139A and 1139B of the Act to require State reporting on the Child Core Set and behavioral health measures on the Adult Core Set, neither CHIPRA nor the SUPPORT Act altered the statutory requirements regarding the annual updates to the Core Sets described in section I.C. of this proposed rule. As such, we propose at § 437.10(a)(1) that we continue the existing annual process of identifying and updating the child health quality measures and adult health quality measures to be included in the Child and Adult Core Sets. We also propose to apply this annual process when identifying and updating the health home quality measures to be included in both Health Home Core Sets.

At § 437.10(a)(2), we propose that the Secretary consult annually with States and other interested parties identified in paragraph § 437.10(e) to establish priorities for the development and advancement of the Child, Adult, and both Health Home Core Sets; to identify any gaps in the measures included in each Core Set; to identify measures which should be removed because they no longer strengthen the Core Sets; and to ensure that all measures included in the Core Sets reflect an evidence-based process (including testing, validation, and consensus among interested parties), are meaningful for States, are feasible for State-level and/or health-home program level reporting as appropriate, and represent minimal additional burden to States.

1. Annual Reporting Guidance

As discussed in section I.C.2. of this proposed rule, sections 1139A(a)(4) and 1139B(b)(3) of the Act require States to use the standardized format and procedures established by the Secretary when reporting on the Child and Adult Core Sets. In addition, section 1945(g) of the Act provides that reporting by section 1945 health home providers to the State on quality measures must be in accordance with such requirements as the Secretary shall specify. Section 1945(c)(4)(B) of the Act provides that the Secretary shall specify all applicable quality measures that certain States with SUD-focused section 1945 health homes must report under that provision. Section 1945A(g)(2)(A) of the Act provides that States with an approved section 1945A SPA must report certain information to the Secretary, including quality measures reported to the State by section 1945A health home providers, in such form and manner determined by the Secretary to be reasonable and minimally burdensome. Section 1902(a)(6) of the Act requires State Medicaid agencies to make such reports, in such form and containing such information, as the Secretary may from time to time require, and to comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports. At proposed § 437.10(a)(3), we propose that the Secretary would develop and annually update reporting guidance needed by States to report on all Core Sets on which States would be required to report under this proposed rule.

Providing States with clear and detailed guidance for reporting on measures in the Core Sets is essential to facilitating consistent reporting across States. Only with consistent, accurate reporting from States can we conduct meaningful analysis of quality measures, make comparisons across States, and support more effective quality improvement. Proposed § 437.10(b) describes the components of the annual reporting guidance to be issued by CMS.

As described at § 437.10(b)(1), the first part of the reporting guidance would be the identification of quality measures in the Child Core Set, Adult Core Set, and the two Health Home Core Sets.[32] As described in proposed § 437.10(b)(1)(i) through (v), this would include: measures newly added to the Core Sets and measures removed from the prior year's Core Sets; measures included in the Adult Core Set that are identified as behavioral health measures; the specific Core Sets measures for which reporting is mandatory for the Child, Adult, and both Health Home Core Sets; the measures for which the Secretary would

[30] *https://www.cms.gov/outreach-education/american-indianalaska-native/aian-behavioral-health.*

[31] See, for example, Meaningful Measures: *https://www.cms.gov/medicare/meaningful-measures-framework/meaningful-measures-20-moving-measure-reduction-modernization. https://www.cms.gov/medicare/meaningful-measures-framework/meaningful-measures-20-moving-measure-reduction-modernization.*

[32] Core Set Measure lists are available at *https://www.medicaid.gov/medicaid/quality-of-care/index.html.*

complete reporting on behalf of States; and the measures for which States may elect to have the Secretary report on their behalf (see additional discussion in section II.D. of this proposed rule); as well as the measures (if any) for which the Secretary would provide States with additional time to report, along with the amount of additional time that would be provided.

The second part of the reporting guidance, described at proposed § 437.10(b)(2) through (b)(7), would specify the form and manner requirements for reporting. This includes information on how to collect and calculate the data on the Core Sets (§ 437.10(b)(2)) and the standardized format and procedures for reporting Core Sets measure data (§ 437.10(b)(3) and (4)).

As described at proposed § 437.10(b)(5) and (6), the reporting guidance would also identify the populations for which States must report on each measure and the attribution rules for reporting on beneficiaries who are included in more than one population during the reporting period. Proposed § 437.10(b)(5) specifically notes three types of populations about which the Secretary would provide guidance: (1) beneficiaries receiving services through specified delivery systems (such as managed care or fee-for-service (FFS)), (2) beneficiaries receiving care through specified health care settings and/or provider types, and (3) beneficiaries who are dually eligible for Medicare and Medicaid. See additional discussion of this proposal in section II.D.3. of this proposed rule. We anticipate that, for State reporting on the Adult and Child Core Sets, the guidance on attribution rules described at proposed § 437.10(b)(6), would call for inclusion in quality reporting based on a beneficiary's continuous enrollment in Medicaid and CHIP. This would ensure that the State has enough time to render services during the measurement period and would be based on a beneficiary's enrollment date in Medicaid and CHIP (not inclusive of retroactive eligibility). In the guidance, we anticipate that we would set attribution rules to address transitions between Medicaid and CHIP or between different Medicaid eligibility groups, delivery systems, managed care plan assignment, etc. within a reporting year, for example, based on the length of time the child or adult was enrolled in each. For State reporting on the section 1945 and section 1945A Health Home Core Sets, we anticipate that the guidance on attribution rules described at proposed § 437.10(b)(6) would call for inclusion in quality reporting based both on a beneficiary's continuous enrollment in Medicaid and their enrollment in an approved health home program. States would be expected to report on the applicable Health Home Core Set(s) when the applicable approved health home program has been in effect and implemented for 6 or more months of the measurement period (see discussion of proposed § 437.15 below). If a State has recently changed or expanded an existing health home program through a SPA, we anticipate that it would be expected to include data related to the changed or expanded program with data from the original (that is, unchanged or unexpanded) health home program when the SPA has been in effect and implemented for 6 or more months of the measurement period.

As described at proposed at § 437.10(b)(7), the reporting guidance would also provide information on the stratification of certain measures by factors such as race, ethnicity, sex, age, rural/urban status, disability, language, or such other factors as may be specified by the Secretary. Core Sets data stratification would be consistent with the statutory requirements outlined in section 1139A(b)(2) of the Act and the goals of the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.[33] At proposed § 437.10(d), we propose that in specifying the measures for which data must be stratified and the factors by which such data must be stratified, the Secretary shall take into account whether stratification can be accomplished based on valid statistical methods and without risking a violation of beneficiary privacy and, for measures obtained from surveys, whether the original survey instrument collects the variables necessary to stratify in the measures, and such other factors as the Secretary determines appropriate.

Proposed § 437.10(c) would provide the Secretary with discretion to provide a phase-in period for mandatory reporting of certain measures and certain populations for all the Core Sets. This phase-in is discussed in more detail in sections II.D.2. and II.D.3. of this proposed rule.

2. Advancing Health Equity Through Data Stratification

Measuring and reporting health disparities is a cornerstone of CMS's approach to advancing health equity. Stratification of Child and Adult Core Sets data (sections 1139A and 1139B of the Act) and of data from the two Health Home Core Sets (sections 1945 and 1945A of the Act) is key to identifying health disparities among Medicaid and CHIP beneficiaries regarding those measures. Stratified data would allow us to monitor health outcomes for disparities between groups of patients who may have different determinants of health.[34] [35] [36] [37] These determinants of health include access to timely, high quality health care in addition to other social determinants of health such as a home environment that promotes health, and access to transportation and nutritious foods.[38] [39] [40] Without this stratified data, disparities in health outcomes may be hidden, limiting opportunities for interventions to improve health outcomes and reduce health inequity.[41] [42] [43]

[34] Racism and Health. Centers for Disease Control. *https://www.cdc.gov/healthequity/racism-disparities/index.html.*

[35] Improving Data Collection across the Health Care System. Content last reviewed May 2018. Agency for Healthcare Research and Quality, Rockville, MD. *https://www.ahrq.gov/research/findings/final-reports/iomracereport/reldata5.html.*

[36] Berg S. Improve health equity by collecting patient demographic data. American Medical Association. 2018. *https://www.ama-assn.org/delivering-care/population-care/improve-health-equity-collecting-patient-demographic-data.*

[37] Dorsey R., Graham G., Glied S., Meyers D., Clancy C., Koh H. Implementing Health Reform: Improved Data Collection and the Monitoring of Health Disparities. Annual Review of Public Health 2014 35:1, 123–138. *https://www.annualreviews.org/doi/full/10.1146/annurevpublhealth-032013-182423.*

[38] Social Determinants of Health. Healthy People 2030. *https://health.gov/healthypeople/objectives-and-data/social-determinants-health.*

[39] CMS, State Health Official Letter #21–001, Opportunities in Medicaid and CHIP to Address Social Determinants of Health, Jan 7 2021. *https://www.medicaid.gov/federal-policy-guidance/downloads/sho21001.pdf.*

[40] Hood, C., Gennuso K., Swain G., Catlin B. (2016). County Health Rankings: Relationships Between Determinant Factors and Health Outcomes. Am J Prev Med. 50(2):129–135. doi:10.1016/j.amepre.2015.08.02.

[41] Bhalla R., Yongue B.G., Currie B.P. Standardizing Race, Ethnicity, and Preferred Language Data Collection in Hospital Information Systems: Results and Implications for Healthcare Delivery and Policy. Journal for Healthcare Quality. 2012;34(2):44–52. doi: *https://doi.org/10.1111/j.1945-1474.2011.00180.x.*

[42] Office of the Assistant Secretary for Planning and Evaluation, Building the Evidence Base for Social Determinants of Health Interventions, Sep 23 2021. *https://aspe.hhs.gov/reports/building-evidence-base-social-determinants-health-interventions.*

[43] CMS Office of Minority Health. (Updated August 2018). Guide to Reducing Disparities in Readmissions. Baltimore, MD: Centers for Medicare & Medicaid Services. *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

This approach to data reporting and stratification is aligned with Executive Order 13985, which calls for advancing equity for underserved populations.[44] Stratified data would enable CMS and States to identify the health outcomes of those underserved populations and potential differences in health outcomes between such populations in these measures. By providing data pertaining to health outcomes for specific underserved populations, this proposal also aligns with the CMS Strategic Priorities.[45] [46]

Therefore, we propose at § 437.10(b)(7) that the annual reporting guidance would identify the measures in the Child Core Set, the measures among the behavioral health measures of Adult Core Set, and the measures in the Health Homes Core Sets that must be stratified by race, ethnicity, sex, age, rural/urban status, disability, language, or such other factors as may be specified by the Secretary, and that this set of measures would be informed by annual consultation with States and other interested parties in accordance with proposed § 437.10(a)(2) and (d). We considered giving States the flexibility to choose which measures they would stratify and by what factors; however, more consistent measurement of differences in health outcomes between different groups of beneficiaries is essential to identifying areas for intervention and evaluation those interventions.[47] This consistency could not be achieved if each State made its own decisions about which data it would stratify and by what factors.[48] [49]

We believe that this proposed stratification of data in the Child Core Set, Adult Core Set, and Health Homes Core Sets measures would be consistent with our statutory authorities. Regarding the Child Core Set, section 1139A(b)(2)(B) of the Act specifies that measures under the pediatric quality measures program shall be designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care. In addition, section 1139A(a)(3)(D) of the Act required that the initial Child Core Set contain the types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and health care for children. Regarding the Adult Core Set, section 1139B(a) of the Act requires the Secretary to utilize similar parameters for establishing the Adult Core Set. Additionally, section 1902(a)(6) of the Act, which requires State Medicaid agencies to make such reports, in such form and containing such information, as the Secretary may from time to time require, authorizes us to require stratification of the data that States report to CMS. Regarding the Health Home Core Sets, in addition to the authority provided by section 1902(a)(6) of the Act, section 1945(g) of the Act requires section 1945 health home services providers to report to the State, in accordance with such requirements as the Secretary shall specify, on all applicable measures for determining the quality of such services. Section 1945A(g)(2)(A)(i) of the Act requires States implementing the section 1945A health home benefit to submit to the Secretary, in such form and manner determined by the Secretary to be reasonable and minimally burdensome, all section 1945A quality reporting data that was submitted to them under section 1945A(g)(1) of the Act, and the information providers report to the State under section 1945A(g)(1)(B) of the Act includes, to the extent applicable, child health quality measures developed under section 1139A of the Act.

We recognize that States may be constrained in their ability to stratify Core Sets measures and that data stratification would require additional State resources. There are several challenges to stratification of measure reporting. First, the validity of stratification is threatened when the demographic data are incomplete. Complete demographic information is often unavailable to CMS and States due to several factors, including the fact that Medicaid and CHIP applicants and beneficiaries are not required to provide race and ethnicity data. Second, when States with smaller populations and/or that are more homogeneous stratify data, it may be possible to identify individual data because there are fewer individuals in each demographic category, raising privacy concerns. Therefore, if the sample sizes are too small, the data would be suppressed, in accordance with the CMS Cell Size Suppression Policy and the data suppression policies for associated measure stewards, and therefore, not publicly reported to avoid a potential violation of privacy.[50]

CMS's ability to stratify measures for which it is able to report on behalf of States will be dependent on whether the original dataset or survey instrument (1) collects the demographic information or other variables needed and (2) has a large enough sample size. There may be opportunities to supplement missing information to allow additional stratification, for example, using techniques such as ''geocoding'' that can be used to impute values for the stratification variables to the reported data. The Transformed Medicaid Statistical Information System (T–MSIS), for example, currently has the capability to stratify some Core Sets measures by sex and urban/rural status, but not by race, ethnicity, or disability status. This is because applicants provide information on sex and urban/rural address, which is reported to T–MSIS by States, whereas applicants are not required to provide information on their race and ethnicity or disability status, and often do not do so. However, CMS is developing the capacity to impute race and ethnicity from claims based on the name and home address of the beneficiary, and anticipates being able to stratify by race and ethnicity, urban/rural status, and sex by the end of 2022. While complete demographic information for beneficiaries would always be preferable to using imputed model values, reliable techniques to impute values is a substitute to enable identification and analysis of health disparities.

With these challenges in mind, we propose at § 437.10(d) that stratification of State reporting of Core Set data would be implemented through a phased-in approach in which the Secretary would specify, through the annual reporting guidance, which measures and by which factors States must stratify reported measures consistent with § 437.10(b)(7). The Secretary would take into account whether stratification can be accomplished based on valid statistical methods and without risking

[44] Executive Order 13985: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[45] CMS Framework for Health Equity 2022–2032: *https://www.cms.gov/files/document/cms-framework-health-equity.pdf.*

[46] CMS Strategic Plan 2022: *https://www.cms.gov/cms-strategic-plan.*

[47] Schlotthauer A.E., Badler A., Cook S.C., Perez D.J., Chin M.H. Evaluating Interventions to Reduce Health Care Disparities: An RWJF Program. Health Aff (Millwood). 2008;27(2):568–573.

[48] Centers for Medicare & Medicaid Services (CMS) Office of Minority Health (OMH). Stratified Reporting. 2022; *https://www.cms.gov/About-CMS/Agency-Information/OMH/research-and-data/statistics-and-data/stratified-reporting.*

[49] National Quality Forum. A Roadmap for Promoting Health Equity and Eliminating Disparities. Sep 2017. *https://www.qualityforum.org/Publications/2017/09/A_Roadmap_for_Promoting_Health_Equity_and_Eliminating_Disparities__The_Four_I_s_for_Health_Equity.aspx.*

[50] CMS Cell Size Suppression Policy, Issued 2020: *https://www.hhs.gov/guidance/document/cms-cell-suppression-policy.*

a violation of beneficiary privacy and, for measures obtained from surveys, whether the original survey instrument collects the variables necessary to stratify the measures, and such other factors as the Secretary determines appropriate. States would be required to submit stratified data for 25 percent of the measures on each of the Core Sets (the Child Core Set, behavioral health measures within the Adult Core Set, and Health Homes Core Sets) for which the Secretary has specified that reporting should be stratified by the second year of annual reporting after the effective date of the final rule; 50 percent of measures for the third and fourth years of annual reporting after the effective date of the final rule; and 100 percent of measures beginning in the fifth year of annual reporting after the effective date of the final rule, on all factors, as specified by the Secretary pursuant to proposed § 437.10(b)(7) such as race and ethnicity, sex, age, rural/urban, disability and language.

We have determined that this proposed phased-in approach to data stratification would be reasonable and minimally burdensome, and thus consistent with section 1945A(g)(2)(A) of the Act, because we are balancing the importance of being able to identify differences in health outcomes between populations under these measures with the potential operational challenges that States may face in implementing these proposed requirements.

We considered other timelines for phasing in mandatory stratification of the Child Core Set, behavioral health measures on the Adult Core Set, and Health Homes Core Sets from as short as 1 year to 7 years, or up to 10 years. We are seeking to balance the changes needed to implement this new requirement with the urgent need to collect stratified data related to health care disparities. We determined that a shorter phase-in period for stratified reporting of the measures identified by the Secretary within the Child Core Set, behavioral health measures on the Adult Core Set, and Health Homes Core Sets, such as between 1 and 4 years, would not likely be operationally feasible and practicable because of the potential systems and contracting changes that States may be required to make in order to collect this data, but allowing implementation to extend beyond 5 years would delay the reporting of stratified data for Core Set measures much longer than would be necessary and would delay the time in which information about health disparities across these measures would be available for analysis . In addition, CMS anticipates that States will not need more than 5 years to implement systems and contracting changes, or any additional support needed to report stratified data. We seek comment on whether 5 years is sufficient for phasing in required stratification of the Child Core Set, behavioral health measures of Adult Core Set, and Health Homes Core Sets, and whether States, providers, and other interested parties would need more, or less, time.

We would provide technical assistance to assist States in improving their ability to collect the information required to allow for valid stratification. In Medicaid, enhanced Federal Financial Participation (FFP) is available at 90 percent for the design, development, installation, or enhancement of mechanized claims processing and information retrieval systems, and 75 percent enhanced FFP is available for operations of such systems, in accordance with applicable Federal requirements.[51] Receipt of these enhanced Federal Medicaid matching funds is conditioned upon States meeting a series of standards and conditions.[52] Additionally, under section 1903(a)(3)(A)(iii) of the Act, the FFP for State expenditures on systems development or modifications necessary for efficient collection and reporting on the Child Core Set is at the State's FMAP under section 1905(b) of the Act. To the extent these system costs are attributable to a State's CHIP (Medicaid Expansion CHIP (MCHIP), or separate CHIP), cost-allocation methodologies set forth in 45 CFR part 75 apply. For the CHIP-funded portion of the cost, States can claim at a State's CHIP enhanced FMAP (EMAP) available under section 2105(b) of the Act. CHIP administrative funding is limited to 10 percent of either a State's total computable allotments for a fiscal year or its total expenditures reported for a fiscal year, whichever is lower.[53]

In addition to the factors discussed above, we are considering whether the annual reporting guidance would require States to also stratify data based on delivery system for the Child Core Set and behavioral health measures on the Adult Core Set. If we did require this, States would be required to identify whether a beneficiary received services on a FFS basis versus or through a managed care organization, including stratifying by health plan. This reporting would allow States to compare the differences in care provided to beneficiaries through different delivery mechanisms, and identify more focused interventions and policies to improve care. Given this benefit, CMS would like to include delivery system among stratification factors if feasible. However, due to the smaller sample size that generally would be reported for section 1945 and section 1945A health home programs, we are not considering requiring stratification of data based on delivery system for the Health Home Core Sets, as doing so would likely result in data suppression.

We seek comment on the feasibility and the potential burden of requiring stratification through the guidance that would be issued under proposed § 437.10(b)(7) based on delivery system, health plan, and population subgroup for the Child and Adult Core Sets and by population subgroup for both the section 1945 and section 1945A Health Home Core Sets. In addition, we seek comment on the potential burden of stratified measure reporting by race, ethnicity, and other demographic factors, as well as on the technical assistance that would be needed to support stratified State reporting.

D. Annual Reporting on the Child, Adult, and Health Home Core Sets

At proposed § 437.15, we propose the key requirements and procedures for States in the reporting of both mandatory and voluntary measures. At § 437.15(a)(1)(i), we propose to require States to report annually, by December 31st, on the measures in the Child Core Set and the behavioral health measures in the Adult Core Set that are identified by the Secretary pursuant to proposed § 437.10(b)(1)(iii). Proposed § 437.15(a)(1)(ii) would require States to report annually, by December 31st, on all measures in the 1945 or 1945A Health Home Core Sets (as applicable) that are identified by the Secretary pursuant to § 437.10(b)(1)(iii), if the State has elected to offer health home services under the State plan under section 1945 or section 1945A of the Act, and if the applicable health home program has an effective date and has been implemented more than 6 months prior to the December 31st reporting deadline. Proposed § 437.15(a)(1)(iii) provides that reporting of all Adult and Health Home Core Sets measures not identified as mandatory by the Secretary pursuant to § 437.10(b)(1)(iii) would be optional (but CMS anticipates that it would strongly encourage States to report on these measures). Other exceptions to these mandatory reporting requirements are proposed at

[51] *See* Section 1903(a)(3)(A)(i) and (B) of the Act, § 433.15(b)(3) and (4), and subpart C of part 433.

[52] 42 CFR 433.112(b)(1) through (22) and 42 CFR 433.116.

[53] See 42 CFR 457.618(e)(1).

§ 437.15(a)(4) and discussed in sections II.D.2. and II.D.3. of this proposed rule.

As described at proposed § 437.15(a)(2), certain measures would be reported by CMS on behalf of States. We currently report measures such as Live Births Weighing Less Than 2,500 Grams and Low-Risk Cesarean Delivery on behalf of States. As noted above, and as specified at proposed § 437.10(b)(1)(iv), our annual reporting guidance would identify the measures for which we would complete annual reporting on behalf of States and the measures for which States may elect to have CMS report on their behalf. While the measures which we report on States' behalf are subject to change, any such measures would not be subject to the general reporting requirement at § 437.15(a)(1)(i) and (ii).

In an effort to streamline measure reporting and assist States in reporting overall, we have been assessing whether there are alternate data sources that can be used to calculate specific measures. For example, CMS is currently using pilot testing to determine the applicability of generating measure specific reporting from State data reported to CMS T–MSIS. However, even if CMS determines that T–MSIS Analytic Files (TAF) could be used to generate measure specific reporting, there may be issues which could prevent the use of T–MSIS TAF or reasons why States may prefer to continue to report the measures. For example, measures with a long lookback period may require more years of TAF data than are available. In addition, CMS may be required to enter into licensing agreements with measure stewards for specific measures. We have also been working with Federal partners to assess whether other Federal data sources could be used to report measures for States, including CDC's Wide-ranging Online Data for Epidemiologic Research (WONDER) databases and CAHPS survey measures from Agency for Healthcare Research and Quality. We seek comment on the use of T–MSIS TAF or other alternate data sources for Core Sets reporting and on CMS reporting on States' behalf.

1. Adherence to Reporting Guidance

As discussed in section II.C.1. of this proposed rule, the Secretary, in consultation with States, updates reporting guidance for all measures annually.[54] This reporting guidance includes a standardized format and procedures for State reporting of Core Sets measures. Not all States consistently adhere to the specifications and reporting formats prescribed by the Secretary. Each year, we spend several months working with States to resolve data quality issues and confirm any deviations from the reporting guidance. If all States adhere to the CMS reporting guidance, data quality would improve, data analysis would be streamlined and more meaningful, and annual data products would be available for use more quickly. Therefore, we propose at § 437.15(a)(3) that, except as described in § 437.15(a)(4), all State Core Set measure reporting would need to be in accordance with the guidance developed by the Secretary pursuant to proposed § 437.10(b), including the guidance developed by the Secretary under § 437.10(b)(3) and (4) about a standardized format for reporting measure data and procedures State agencies must follow in reporting measure data.

We recognize that adherence to CMS-issued reporting guidance as described in proposed § 437.15(a)(3) would be a substantial change from the way some States currently report measures, which is based on either their own programming specifications or that of their contractors. Therefore, States may need to reprogram their reporting systems to adhere to the reporting guidance. As such, we considered not requiring use of the reporting guidance at all. However, we believe that adherence to the reporting guidance is the best way to provide true comparisons across States on quality measure performance and to derive national performance rates of the care provided to Medicaid and CHIP beneficiaries. In addition, we are actively working to reduce State burden by streamlining reporting and developing alternate methods of reporting measures, including methods described above, by which CMS will obtain data and complete reporting on behalf of States. We seek comments on this approach, as well as strategies that CMS may implement to provide the best technical assistance to States as they transition to standardized reporting and what States have found helpful in the past, such as one-on-one sessions, written guidance, measure specification and coding assistance, site visits, webinars, learning collaboratives, and other opportunities to hear best practices and from other States, or any other ideas not listed here.

2. Phased-in Reporting for Certain Mandatory Measures

As noted above, proposed § 437.10(c) would allow the Secretary to establish a phase-in period for reporting of certain measures, depending on their complexity, and proposed § 437.15(a)(4) provides exceptions to the mandatory reporting requirements at § 437.15(a)(1) for measures to be phased-in. The Core Sets include more than one type of quality measure, with differing data collection processes and requirements. We recognize that some types of data collection are more administratively burdensome than others.

Some measures, often referred to as ''administrative measures,'' are typically calculated from information included in claims. These measures, which typically are the easiest for States to report, generally focus on health care utilization and cost. Measures which focus on health outcomes for beneficiaries, often referred to as ''outcomes measures'' or ''hybrid measures,'' typically require clinical information from medical records as well as administrative data from claims. Clinical information may be obtained from chart reviews or information stored in electronic health records (EHRs). Other measures on the Core Sets are calculated from surveys such as CAHPS.

While measures of health outcomes are often the most meaningful types of measures, they can also be the most challenging to report. States often struggle with collecting data for measures that depend on either non-claims sources, hybrid specifications, or EHRs. Chart reviews have been a common method of obtaining the clinical information needed for hybrid measures that is not available from claims, such as referral to treatment or blood pressure rates. However, chart reviews are expensive, and require a trained reviewer to manually review and obtain needed information on a set number of charts. Other methods of data collection, such as obtaining clinical information from EHRs, may require complex computerized patient matching processes that take time and resources to develop, as well as negotiation of appropriate data use agreements between State Medicaid and CHIP agencies and other State agencies or private entities (for instance, EHR vendors). We seek comments on how best to phase-in reporting of health outcome and survey measures for Medicaid and CHIP and the frequency of reporting these measures. In addition, to support States in meeting the

[54] Child and Adult Core Set reporting guidance: *https://www.medicaid.gov/medicaid/quality-of-care/performance-measurement/adult-and-child-health-care-quality-measures/index.html.*

Health Home Core Set reporting guidance: *https://www.medicaid.gov/resources-for-states/medicaid-state-technical-assistance/health-home-information-resource-center/health-home-quality-reporting/index.html.*

proposed mandatory reporting requirements, we seek comment on the technical assistance States might need from CMS to be able to report on health outcomes and survey measures. We also seek comments on promising practices and approaches for accurate electronic data capture of race and ethnicity and other demographics; programmatic requirements; and best practices and lessons learned from linking records from disparate data sources for measure calculation and reporting.

New and modified measures pose additional challenges. When a new measure is added to the Core Sets, or the measure specification changes, States must adjust their collection processes, which may require corresponding contractual updates. As such, it may not always be possible for States to report measures to CMS in the first year after they are added to the Core Sets, even when they rely on claims data alone but especially when they require other types of data.

Thus, while mandatory reporting would be required, as described at proposed § 437.10(b)(1)(iii) and § 437.15(a)(1), beginning with FFY 2024 reporting, we propose at § 437.15(a)(4)(i) that reporting of measures identified by the Secretary for phase-in under § 437.10(c) would be optional for FFY 2024 and subsequent years as identified in the reporting guidance, but not required. Similarly, when a new measure is added to the Child Core Set, a new behavioral health measure is added to the Adult Core Set, or a new measure is added to either of the Health Home Core Sets, reporting of the new measure may not be required immediately. Per proposed § 437.10(c), in determining which measures would be subject to a phase-in period and how long such phase-in period would be, the Secretary would take into account the level of complexity required for States to report the measure. As also proposed in § 437.10(b)(1)(v) and (c), the Secretary would specify any such phase-in periods in the annual reporting guidance described in proposed § 437.10(b). We believe that giving States more time to refine their data collection and reporting systems for ''difficult to report'' measures, would improve the accuracy of State reporting. Recognizing that the hard-to-report outcomes measures are often the most meaningful measures, we plan to provide intensive technical assistance to assist States in successfully reporting on such measures.

3. Phased-in Reporting for Certain Populations

We propose at § 437.10(b)(5) that the Secretary would identify, through annual reporting guidance, those populations for which States would be required to report measure data for a given year. Recognizing the challenges that States face in reporting measure data for certain populations, proposed § 437.10(c) provides that the Secretary would also be authorized to provide, in the annual reporting guidance, that mandatory State reporting for certain populations could be phased in over a specified period of time, and that the Secretary's identification of such populations would take into account the level of complexity required for States to report the measure for different populations. Historically, due to the voluntary nature of reporting on measures in the Core Sets, States have not included all the populations identified in the measure specifications when reporting Core Sets measures to CMS. For example, some States currently report Medicaid beneficiaries but not CHIP beneficiaries. Other States include only beneficiaries enrolled in managed care but not FFS beneficiaries or omit reporting for beneficiaries enrolled in both Medicaid and Medicare.

Under this proposal, the Secretary would specify each year, in the reporting guidance issued under § 437.10(b), the populations on which States would be required to report the Core Set measures, and whether mandatory reporting for certain populations could be phased in over time. CMS anticipates that this annual guidance would take the following statutory language into consideration. The statutory language in section 1139A(a)(4)(B) of the Act requires mandatory reporting of measures on the Child Core Set for pediatric health care under Titles XIX and XXI of the Act. Section 1139B(b)(3)(B) of the Act provides for development of a core set of adult health quality measures for Medicaid eligible adults and requires that States report on all behavioral health measures included in the Adult Core Set starting in 2024. To improve the quality of care delivered to all Medicaid and CHIP beneficiaries, we interpret this language as requiring that reporting for the Child Core Set include *all* beneficiaries covered by Medicaid and CHIP and reporting for the behavioral health measures in the Adult Core Sets include *all* beneficiaries covered by Medicaid. This includes beneficiaries enrolled in all Medicaid and CHIP delivery systems as well as services received in all applicable health care settings, such as hospitals, outpatient settings, Federally Qualified Health Centers (FQHCs), rural health clinics (RHCs), and facilities operated by IHS, by Tribes and Tribal Organizations under the Indian Self-Determination and Education Assistance Act, and by Urban Indian Organizations under Title V of the Indian Health Care Improvement Act.

With respect to health home measure reporting, section 1945(g) of the Act provides that section 1945 health home providers must report to the State, in accordance with such requirements as the Secretary shall specify, on all applicable measures for determining the quality of section 1945 health home services. Section 1945(c)(4)(B) of the Act specifies that the reporting required under that provision should be with respect to SUD-eligible individuals provided health home services under the applicable SPA. Section 1945A(g)(1)(B) of the Act requires health home providers to report to the State information on all applicable measures for determining the quality of section 1945A health home services delivered by the provider. Section 1945A(g)(2)(A)(i) of the Act requires a State implementing the section 1945A health home benefit to report to the Secretary all quality information that the State received from its health home providers under section 1945A(g)(1)(B) of the Act. In addition, section 1902(a)(6) of the Act, on which CMS also relies for these proposals, provides that State Medicaid agencies must make such reports, in such form and containing such information, as the Secretary may from time to time require. Taken together, these provisions would support guidance under § 437.10(b) that requires State reporting for the Health Home Core Sets to include *all* beneficiaries enrolled in the applicable health home program. This would include health home program beneficiaries receiving services through all Medicaid delivery systems, as well as health home program beneficiaries who received Medicaid-covered services in all applicable health care settings, such as hospitals, outpatient settings, FQHCs, RHCs, and facilities operated by IHS, Tribes and Tribal Organizations, and Urban Indian Organizations, during the measurement period. We would anticipate that health home programs would have to report on beneficiaries who have received Medicaid-covered services in FQHCs, RHCs, and facilities operated by IHS, Tribes and Tribal Organizations, and Urban Indian Organizations only if a beneficiary who

is enrolled in the applicable health home program received Medicaid-covered services in one of these settings during the measurement period.

Currently, most States do not include all their Medicaid and CHIP population in their Core Set reporting; most States report only on a subset of their entire Medicaid and CHIP population when reporting on the Child and Adult Core Sets, and do not report on the entire population of health home program beneficiaries when reporting on the section 1945 Health Home Core Set. Populations for which many States do not currently report Core Sets measure data include: (1) beneficiaries who are dually-eligible for Medicare and Medicaid; (2) beneficiaries served by IHS, Tribes and Tribal Organizations, or Urban Indian Organizations; (3) beneficiaries served by FQHCs, and (4) beneficiaries receiving services on a FFS basis in a State where most beneficiaries are enrolled in a managed care plan.

Some States do not include in their reporting FFS dually eligible beneficiaries because such reporting often requires additional work to obtain and analyze Medicare utilization data. In 2019, there were 12.3 million individuals simultaneously enrolled in Medicare and Medicaid, also known as dually eligible beneficiaries.[55] This includes beneficiaries who receive full Medicaid benefits and beneficiaries whose Medicaid coverage is limited to payment of Medicare premiums and/or cost sharing. Forty-one percent of dually eligible beneficiaries have at least one mental health diagnosis, and 60 percent have multiple chronic physical and/or mental health conditions.[56] [57] Since Medicare is the primary payer for dually eligible beneficiaries for services covered by both Medicare and Medicaid, we believe State Medicaid data may be insufficient to perform analysis on certain Core Set measures for dually eligible beneficiaries. For example, Medicare utilization data, along with State Medicaid data, is necessary to report on 12 of the 13 behavioral health measures on the Adult Core Set for dually eligible beneficiaries. Therefore, based on the current measure specifications, we believe States need Medicare utilization data combined with State Medicaid data to fulfill reporting completely and accurately on Core Sets measures for dually eligible beneficiaries. Via the Medicare-Medicaid Data Sharing Program, CMS makes available certain Medicare data to States free of charge, which States can use to help fulfill reporting on Core Sets measures for this population.[58] While we currently provide technical assistance, and will continue to do so, including written instruction, to assist States in requesting and analyzing Medicare data, we solicit comment on additional considerations and technical assistance that would help States more easily obtain and use the Medicare data to calculate the Core Sets measures for dually eligible beneficiaries.

Similarly, States might not include in their reporting measure data for beneficiaries receiving health care services at FQHCs, RHCs, or from IHS, Tribes and Tribal Organizations, or Urban Indian Organizations, because State Medicaid agencies may not receive claims data needed for measure reporting from those facilities. In 2018, more than 1.8 million American Indians and Alaska Natives were enrolled in coverage through Medicaid and CHIP.[59] Currently, there is no national database for health care services provided at Tribal facilities. Each Tribal entity is responsible for reporting its own claims and the level of detail provided, such as type of clinical service provided or diagnosis, varies by facility and by State; each State establishes its own guidance for health care facilities operated by IHS, Tribes and Tribal Organizations, and Urban Indian Organizations. While we are currently working with IHS to determine best practices, we solicit comment on additional considerations and technical assistance support that would help States more easily obtain and use the health care facility data from IHS, Tribes and Tribal Organizations, and Urban Indian Organizations that would be needed to calculate the Core Sets measures.

FQHCs, defined for Medicaid purposes at section 1905(l)(2)(B) of the Act, are (1) community-based health care providers that either receive grant awards from the HRSA Health Center Program under section 330 of the Public Health Service Act to provide primary care services in underserved areas or are designated by HRSA as Health Center Program look-alikes; or (2) outpatient health programs or facilities operated by a tribe or tribal organization under the Indian Self-Determination Act (Pub. L. 93–638, enacted January 4, 1975) or by an Urban Indian Organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services. FQHC clients may include but are not limited to Medicaid and CHIP beneficiaries. HRSA's Health Center Program includes approximately 1,400 health centers with more than 10,000 delivery sites in the U.S., DC, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Federated States of Micronesia, Marshall Islands, and the Northern Mariana Islands.[60] While Health Center Program awardees and look-a-likes report to a Uniform Data System (UDS), which contains clinical quality measures that align with CMS's electronic-specified Clinical Quality Measures (e-CQMs), not all Core Set measures are currently able to be calculated using data from the UDS. Additionally, States vary in their access to these data and therefore inclusion in Core Sets reporting. We are working with HRSA to determine best practices and will then provide technical assistance to States and territories on how to include these data in Core Set reporting. We solicit comment on additional considerations and technical assistance support that would help States and territories more easily obtain and use the FQHC and RHC data needed to calculate the Core Sets measures.

FFS Medicaid beneficiaries in managed care States often are not included in Core Sets reporting because States rely on data collected by their managed care organizations and States have not invested in the infrastructure needed to report data from their smaller FFS populations. Omission of these populations from measure reporting limits the ability to evaluate the quality of care provided to the entirety of a State's Medicaid and CHIP population (or health home program), to determine

[55] *https://www.cms.gov/files/document/medicaremedicaiddualenrollmenteverenrolledtrendsdatabrief.pdf.*

[56] Physical and Mental Health Condition Prevalence and Comorbidity among Fee-For-Service Medicare-Medicaid Enrollees. Centers for Medicare & Medicaid Services, September 2014. Available at *https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Dual_Condition_Prevalence_Comorbidity_2014.pdf.*

[57] Medicare-Medicaid Enrollee Information, National 2012. Available at *https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/NationalProfile_2012.pdf#:~:text=Nationally%2C%20in%202012%2C%20among%20Medicare-%20Medicaid%20FFS%20enrollees%3A,%26%20Medicaid%20Services%20%7C%20Medicare-Medicaid%20Coordination%20O%EF%AC%83ce%204.*

[58] For more information on the Medicare-Medicaid Data Sharing Program please see here *https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/StateAccesstoMedicareData* or contact the State Data Resource Center at *https://www.statedataresourcecenter.com/home/contact-us.*

[59] *https://www.medicaid.gov/medicaid/indian-health-medicaid/index.html.*

[60] HRSA UDS *https://bphc.hrsa.gov/sites/default/files/bphc/datareporting/reporting/2019-uds-manual.pdf.*

potential health care disparities across delivery systems and subpopulations, and to compare the quality of care across States.

As discussed, reporting guidance published by the Secretary under proposed § 437.10(b) would, per § 437.10(b)(5), identify the populations for which States must report quality measures, and under proposed § 437.10(c) may provide that mandatory State reporting for certain measures and reporting for certain populations of beneficiaries will be phased in over a specified period of time. Per proposed § 437.15(a)(3), which would require States to adhere to the reporting guidance issued by the Secretary under § 437.10(b) when reporting on Core Sets Measures (except as described in § 437.15(a)(4)), reporting on the Child Core Set and the behavioral health measures in the Adult Core Set, as required at proposed § 437.15(a)(1)(i), would have to include all beneficiary populations identified by the Secretary under proposed § 437.10(b)(5). Reporting on both Health Home Core Sets, as required at proposed § 437.15(a)(1)(ii), would have to include all beneficiary populations identified by the Secretary under proposed § 437.10(b)(5). Proposed § 437.15(a)(4)(ii) would exempt States from having to report on populations for whom reporting is not yet phased in. States would initially be encouraged, but not required, to report on populations for whom mandatory reporting is not yet phased in.

We are developing strategies to improve State access to Medicaid data in order to improve reporting capabilities. For example, we are developing strategies to improve reporting for beneficiaries served by IHS, Tribes and Tribal Organizations and Urban Indian Organizations. Some States have been able to leverage their Health Information Exchanges to accomplish more complete reporting of entire Medicaid and CHIP populations, and we are planning to work with those States to identify and share best practices with other States and facilitate peer-to-peer learning. Finally, we are currently piloting technical assistance work with States with the idea of providing written resources and guidance.

Ultimately, as we continue to provide technical assistance and States continue to build capacity, we expect to require States to report on the populations discussed above for each Core Set through the annual reporting guidance. This will help achieve data consistency across States and provide useful and actionable quality measurement data to identify disparities and support efforts to improve the quality of healthcare provided by State Medicaid and CHIP agencies for all beneficiaries.

In developing these proposals, we considered proposing to require States to report the measures on the Child Core Set for all populations served by Medicaid and CHIP, and the behavioral health measures on the Adult Core Set for all Medicaid adult populations beginning in FFY 2024, with no provision for the Secretary to allow a phased-in approach. We also considered proposing to require States to report the measures for both Health Home Core Sets for all beneficiaries enrolled in approved health home programs beginning in FFY 2024, with no phased-in approach. However, we are concerned that it may not be feasible for States to begin reporting on all populations by the FFY 2024 reporting year. A flexible approach to identifying mandatory populations in annual guidance that permits phasing in mandatory reporting for certain populations, as proposed in § 437.10(b)(5) and (c) and § 437.15(a), would give States time to develop the infrastructure and resources to allow them to report on all Medicaid, CHIP, and health home program beneficiary populations. We seek comments on how best to provide technical assistance to assist States so they can report on all populations specified by the Secretary each year for the Medicaid, CHIP, and Health Home Core Sets, and ultimately, so that they can report on all Medicaid, CHIP, and health home program beneficiary populations, as well as on how long States might need to be able to report on all Medicaid, CHIP, and health home program beneficiary populations.

4. Separate Reporting of the Child Core Set for Medicaid and CHIP Beneficiaries

Currently, some States report the Child Core Set for their Medicaid population, but not for their CHIP population, while other States report these populations together. As discussed previously, it is important that Child Core Set measures are reported for all populations covered in both Medicaid and CHIP. We believe it is also important to monitor and analyze quality performance in separate CHIPs independently from Medicaid programs to allow for comparison of performance between the programs. Therefore, we propose at § 437.15(b) that States with a separate CHIP report on Child Core Set measures in three categories: Medicaid and CHIP combined; Medicaid inclusive of CHIP-funded Medicaid expansion (Titles XIX and XXI); and separate CHIP (Title XXI).

Most States currently report measures separately for the two programs, yet their methods of collecting and reporting the measures may differ. Under this proposed rule, State Medicaid programs and CHIPs would be required to use the same reporting guidance, as described at proposed § 437.15(a)(3) and proposed § 457.770 respectively, including technical specifications (that is, hybrid, administrative, etc.), for reporting quality measures for both Medicaid beneficiaries and separate CHIP beneficiaries. The use of consistent methodologies would allow the Medicaid and CHIP rates to be validly combined by CMS for an overall State rate.

We recognize that it is not uncommon for children to move between Medicaid and CHIP as their family income fluctuates. Because many measure specifications require 12 months of continuous eligibility to be included in the data reported, there is potential for children who move between the programs during a 12 -month period to not be captured when the programs report separately. Under this proposed rule, States would capture children who transfer between the two programs through common reporting guidance. The reporting guidance would include attribution rules, as described at proposed § 437.10(b)(6), for example, based on the length of time the child was enrolled in each program, the attribution rules would clarify in which program (Medicaid or CHIP) a State would count a child who transitioned between programs within a reporting year.

Reporting in this manner would (1) maximize the number of children captured in the data; (2) support production of a median overall combined State performance rate to compare the quality of care across States; (3) enable comparisons of performance between Medicaid and CHIP programs; and (4) identify health disparities in Medicaid and CHIP populations both within a State and nationally.

We considered requiring States with separate CHIPs to report on the Child Core Set measures for all Medicaid and separate CHIP-covered children together to ensure that children who transition between programs would not be lost and, if so, the attribution rules to determine in which program a child who transitioned between Medicaid and CHIP during the reporting period should be included. We seek comment on how best to provide technical assistance to

assist States in resolving data issues when a State with separate CHIP collects Child Core Set measures using different reporting guidance or data sources from those used for the collection of Child Core Set measures in their Medicaid population. We also seek comment on whether States with separate CHIPs should combine Medicaid and separate CHIP Child Core Set reporting in order to ensure that children who transition between programs are not lost and, if so, the attribution rules to determine in which program a child who transitioned between Medicaid and CHIP during the reporting period should be included.

E. Application to CHIP for the Child and Adult Core Sets

Section 1139A(a)(1) of the Act requires the Secretary to develop a core set of measures for reporting on the quality of health care provided to children by State programs administered under titles XIX and XXI. Beginning with the FFY 2024 annual report, section 1139A(a)(4)(B) of the Act requires State reporting on the quality of pediatric health care provided under both title XIX and title XXI utilizing the standardized format and procedures established by the Secretary. Section 1139B(a) of the Act requires the Secretary to develop a core set of measures for reporting on the quality of health care provided to adults under title XIX in the same manner as that used to develop the Child Core Set. However, section 1139B(b)(3)(B) of the Act makes reporting by States on the Adult Core Set measures mandatory only with respect to the quality of behavioral health care provided to Medicaid-eligible adults. As such, a separate CHIP is encouraged, but not required, to report on the measures in the Adult Core Set.

At § 457.700, we propose to add sections 1139A and 1139B of the Act as additional bases for quality reporting in CHIP. Under these statutory provisions, we propose at § 457.770(a) to require that separate CHIPs report on all measures in the Child Core Set in accordance with the requirements in part 437. Because each measure in the Child Core Set (as well as the Adult Core Set) has its own age requirements, which are established by the measure steward, the State would be required to report on the quality of care provided to all CHIP beneficiaries who fall within the age range for each measure in the Child Core Set, not just those beneficiaries covered as a targeted low-income child. For example, the 2022 Child Core Set includes a measure on asthma medication, which is applicable to individuals between the ages of 5 and 18. In a State that covers both targeted low-income children and targeted low-income pregnant individuals, the State would be required to report on the asthma medication measure for all beneficiaries aged 5 through 18 who are eligible as either a targeted low-income child or a targeted low-income pregnant individual.

At proposed § 457.770(b), we strongly encourage States to also follow the requirements of part 437 for any voluntary reporting on the measures in the Adult Core Set. As such, if a State elected to report, for example, on the 2022 Adult Core Set Measure of flu vaccinations for individuals ages 18 to 64, the State would report on this measure with respect to targeted low-income children who are age 18 and targeted low-income pregnant individuals, if covered by the State, who are within the age range for this measure.

States also have the option to extend special CHIP child health assistance for the duration of pregnancy (also referred to as the ''unborn option'') in compliance with applicable eligibility criteria for coverage under the CHIP State plan, thereby providing coverage to pregnant individuals who themselves are not eligible for Medicaid or CHIP. States that provide coverage for the duration of pregnancy would be required, in accordance with § 457.770(a), to include this population of CHIP beneficiaries when reporting on quality measures in the Child Core Set. If such State reports on the behavioral health measures in the Adult Core Set, or any other Adult Core Set measures for their CHIP population, pregnant individuals receiving coverage for the duration of pregnancy would be included in such reporting if they meet the age parameters for the measure. We believe that reporting on the quality of health care provided to the pregnant individual for the duration of their pregnancy, based on the age of that individual, would provide a more accurate picture of the specific needs of this population and the quality of critical health care services received by pregnant individuals in CHIP. We seek comment on including pregnant individuals receiving coverage under the special CHIP child assistance in the requirements for mandatory reporting of measures in the Child Core Set as described previously in this proposed rule, based on the age of the pregnant individual.

To ensure that States and CMS can measure and improve the quality of care provided to all CHIP beneficiaries, in States that have extended CHIP coverage to targeted low-income pregnant women, we encourage reporting on not only the behavioral health measures, but all measures in the Adult Core Set. In light of the increasing rates of maternal morbidity and mortality in the United States, highlighted, but not limited to, non-Hispanic black women whose rate of maternal mortality was 55.3 deaths per 100,000 live births, 2.9 times the rate for non-Hispanic white women in 2020, it is more important than ever to collect information on the health of pregnant and postpartum women in CHIP and the care provided to them.[61]

F. Ensuring Compliance With the Mandatory Reporting Requirements

Section 1904 of the Act and implementing regulations at § 430.35 allow CMS to withhold Federal Medicaid payments, in whole or in part, from a State that is non-compliant with Federal requirements under section 1902 of the Act. The mandate to begin reporting Child and Adult Core Sets measures is set forth in sections 1139A and 1139B of the Act, and it is not cross-referenced in section 1902 of the Act. Similarly, sections 1945 and 1945A of the Act, which authorize the two Medicaid health home benefits to which this proposed rule would apply, are not cross-referenced in section 1902 of the Act. However, section 1902(a)(6) of the Act requires the Medicaid State plan to provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports. And, as discussed previously in this proposed rule, section 1902(a)(6) of the Act also forms part of the authority for our proposed State reporting requirements related to the Child, Adult, and Health Homes Core Sets. Based on our authority at section 1902(a)(6) of the Act, we propose at § 437.20(a) to require the Medicaid State plan to include language attesting that the agency would report on the Child, Adult, and Health Home Core Sets in accordance with the requirements in § 437.15. Health Home SPAs, under proposed § 437.20(a)(3), would also be required to include an attestation that the State would require its providers of health home services to report to the State on the measures that the State has to report. With these attestations in the State plan, we would have authority under section 1904 of the

[61] *https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm.*

Act to withhold Federal Medicaid payments if an agency fails to comply with the Medicaid reporting requirements.

Current § 457.204 provides for financial withholding in the event of noncompliance with CHIP regulations at part 457. Thus, once the mandatory quality Child Core Set reporting requirement is codified at § 457.770, CMS would be able to withhold Federal funds under Title XXI for noncompliance with the reporting requirement in CHIP.

To meet the quality measures reporting requirements proposed in this rule at § 437.10 through § 437.20, States may need to make changes to one or more State systems. As such, we also propose to revise the requirements set out at § 433.112 that States must meet in order to receive enhanced Federal Medicaid match for systems development (at a 90 percent matching rate) and operations (at a 75 percent matching rate). We propose to add to the requirements at § 433.112 that States must comply with the standards and protocols for reporting on the Child, Adult, and Health Home Core Sets as adopted by the Secretary under sections 1139A, 1139B, 1902(a)(6), 1945(c)(4)(B) and (g), and 1945A(g) of the Act and 42 CFR part 437 subpart A. As noted above, State expenditures on systems development or modifications necessary for efficient collection and reporting on the Child Core Set are matched at the State's FMAP under section 1905(b) of the Act.

We believe this proposed requirement would not only incentivize adequate systems development to achieve compliance with the proposed quality reporting requirements, but would also improve States' ability to comply with the proposed reporting requirements. Availability of financial penalties would provide us with leverage to enforce quality measure reporting, which is foundational to improving the quality and health outcomes for Medicaid and CHIP beneficiaries. While enhanced match for systems development and maintenance is not available for CHIP, it is likely that compliance in CHIP and Medicaid would occur in tandem, as States generally use the same system for reporting measures for both programs. In the event this does not happen in a given State, withholding Federal funds under the CHIP regulations would remain an option for CMS to pursue.

We also propose other changes to § 433.112. These proposed changes would apply existing Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security, Breach Notification, and Enforcement Rules under 45 CFR parts 160 and 164, the HIPAA electronic transactions standards under 45 CFR part 162, and the health information technology standards under 45 CFR part 170 subpart B to the Core Sets. In 1996, Congress enacted HIPAA,[62] which included Administrative Simplification provisions requiring the establishment of national standards [63] to protect the privacy and security of individuals' health information, establishing civil money and criminal penalties for violations of the requirements, and electronic transactions standards, among other provisions.[64] The Administrative Simplification provisions and implementing regulations apply to covered entities, which are health care providers who conduct covered health care transactions electronically, health plans, and health care clearinghouses.[65] The Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) [66] added breach notification requirements and created penalty tiers for HIPAA violations and also authorized the health information technology standards promulgated at 45 CFR part 170 subpart B.

Additionally, we propose to refer to ''standards and implementation specifications for health information technology'' rather the existing term, ''industry standards.'' The present text refers to ''industry standards'' that have been adopted in accordance with 45 CFR part 170, subpart B. Subpart B of part 170 is titled ''Standards and Implementation Specifications for Health Information Technology,'' so we propose this change to § 433.112 to conform to that title.

III. Solicitation of Public Comment

Throughout sections I. and II. of this proposed rule, we have identified a number of technical implementation considerations and requested comment on the appropriateness of the processes described to fulfill the proposed requirements for mandatory reporting. Additionally, we have requested input on the types of technical assistance and support which would be most useful for States in meeting the proposed requirements for mandatory reporting. We are seeking both general comments on the proposed rule as well as comments on specific topic areas identified in sections I. and II. of this proposed rule.

Specifically, we are requesting comments on:

1. The proposed phased-in approach to stratifying measures, and whether 5 years is the right amount of time to phase-in stratification. Also, whether the Secretary should establish which measures would have to be stratified each year and by what factors or if States should decide what measures and factors for which they would submit stratified data. (Section II.C.2. of this proposed rule.)

2. The burden of requiring stratification based on delivery system, health plan, and population subgroup for the Child and Adult Core Sets and by population subgroup for both the section 1945 and section 1945A Health Home Core Sets, and the burden of stratified reporting by race, ethnicity, and other demographic factors for all Core Sets. In addition, we seek comments on the technical assistance that would be needed to support stratified State reporting. (Section II.C.2. of this proposed rule.)

3. The use of T–MSIS TAF or other alternate data sources for Core Sets reporting and on CMS reporting on States' behalf. (Section II.D. of this proposed rule.)

4. Requiring adherence to reporting guidance outlined in section II.D.1. of this proposed rule.

5. The most effective technical assistance CMS could provide to States to support their transition to standardized mandatory reporting, including:

a. What technical assistance States have found helpful in the past, such as one-on-one sessions, written guidance, measure specification and coding assistance, site visits, webinars, learning collaboratives, opportunities to hear best practices and from other States, or any other ideas. (Section II.D.1. of this proposed rule.)

b. The type of technical assistance needed in order for States to report both health outcomes and survey measures. (Section II.D.2. of this proposed rule.)

c. Whether the identification of promising practices and lessons learned would assist States in accurately reporting race, ethnicity, and other

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[62] *See* Public Law 104–191, 110 Stat. 1936 (August 21, 1996).

[63] *See also* sec. 264 of HIPAA (codified at 42 U.S.C. 1320d–2 note).

[64] *See* 42 U.S.C. 1320d–1–1320d–9. With respect to privacy standards, Congress directed the Department to address at least the following: (1) The rights that an individual who is a subject of individually identifiable health information should have. (2) The procedures that should be established for the exercise of such rights. (3) The uses and disclosures of such information that should be authorized or required. 42 U.S.C. 1320d–2 note.

[65] *See* 42 U.S.C. 1320d–1 (applying Administrative Simplification provisions to covered entities); 45 CFR 160.103 (definition of ''Covered entity'').

[66] Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).

demographic data; data linkages; and programmatic requirements. (Section II.D.2. of this proposed rule.)

d. What technical assistance would most assist States so they can report on all populations specified by the Secretary each year for the Medicaid, CHIP, and Health Home Core Sets, and ultimately, so that they can report on all Medicaid, CHIP, and health home program beneficiary populations, as well as on how long States might need to be able to report on all Medicaid, CHIP, and health home program beneficiary populations. (Section II.D.3. of this proposed rule.)

e. How best to provide technical assistance to States to address data issues related to different reporting guidance or data sources between separate CHIP and Medicaid. (Section II.D.4. of this proposed rule.)

6. How best to phase-in reporting of health outcomes and survey measures for Medicaid and CHIP and the frequency of reporting these measures (that is, annually or biennially). (Section II.D.2. of this proposed rule.)

7. Whether States with separate CHIPs should combine Medicaid and separate CHIP Child Core Set reporting in order to ensure that children who transition between programs are not lost and, if so, the attribution rules to determine in which program a child who transitioned between Medicaid and CHIP during the reporting period should be included. (Section II.D.4. of this proposed rule.)

8. Include in the requirements for mandatory reporting of measures in the Child Core Set pregnant individuals receiving coverage under the special CHIP child assistance. (Section II.E. of this proposed rule.)

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection must be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this rule that contain information collection requirements.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). Table 1 presents BLS' mean hourly wage along with our estimated cost of fringe benefits and overhead (calculated at 100 percent of salary) and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Business Operations Specialists	13–1000	37.66	37.66	75.32
Chief Executives	11–1011	95.12	95.12	190.24
Computer Programmers	15–1251	45.98	45.98	91.96
Data Entry/Information Processing Workers	43–9020	17.96	17.96	35.92
General Operations Manager	11–1021	60.45	60.45	120.90
Statistician	15–2041	46.72	46.72	93.44

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

To estimate the burden on States, it was important to take into account the Federal government's contribution to the cost of administering the Medicaid and CHIP programs. The Federal government provides funding based on a FMAP that is established for each State, based on the per capita income in the State as compared to the national average. FMAPs range from a minimum of 50 percent in States with higher per capita incomes to a maximum of 83 percent in States with lower per capita incomes. States receive an ''enhanced'' FMAP for administering their CHIP programs, ranging from 65 to 85 percent. Medicaid funding for U.S. territories works a bit differently than funding for the 50 States and District of Columbia, in that the FMAP for each territory under Medicaid is statutorily set at 55 percent, though the rate has been increased temporarily in recent years, and annual funding is capped.[67] For Medicaid, all States (including the territories) receive a 50 percent Federal Financial Participation (FFP) for administration. As noted previously, States also receive higher Federal matching rates for certain services and for certain systems improvements, redesign, or operations. As such, in taking into account the Federal contribution to the costs of administering the Medicaid and CHIP programs for purposes of estimating State burden with respect to collection of information, we elected to use the higher end estimate that the States would contribute 50 percent of the costs, even though the burden would likely be much smaller.

To derive average costs for individuals, we used U.S. census data to assume an average household income of $41,664, or 200 percent of the poverty threshold of $20,832 for a family of three. Assuming 2,088 work hours per year, this translates to an hourly rate of $19.95/hr. Unlike our private sector adjustment to the respondent hourly wage, we are not adjusting this figure for fringe benefits and overhead since the individuals' activities would occur outside the scope of their employment.

[67] Section 1905(b) of the Act: *https://www.ssa.gov/OP_Home/ssact/title19/1905.htm.*

B. Proposed Information Collection Requirements (ICRs)

The following proposed collection of information requirements and burden will be submitted to OMB for review under control number 0938–1188 (CMS–10434 #26 for the Child Core Set and the Adult Core Set and #47 for the Health Home Core Sets) and applies to the burden associated with mandatory reporting. The burden for reporting Adult Core Set measures (outside of behavioral health measures) which remain voluntary for States to report is not included in the ICRs. Subject to renewal, the control number is currently set to expire on July 31, 2023. The burden to health home providers for reporting Health Home Core Sets data to States is not included in the ICRs but is included in control number 0938–1188 (CMS–10434 #22) which is in the process of being updated to cover additional benefits and requirements that have been added under section 1945A of the Act.

Under sections 1139A, 1139B, and 1902(a)(6) of the Act, we are granted the authority to collect quality metrics on State-specific Medicaid and CHIP programs with the purpose of measuring the overall national quality of care for Medicaid and CHIP beneficiaries, monitoring performance at the State-level, and improving the quality of health care. Under sections 1902(a)(6), 1945(c)(4)(B), 1945(g), and 1945A(g) of the Act, we are also proposing to require States implementing the section 1945 and/or section 1945A health home benefits to report on certain quality measures to the Secretary and to require their health home providers to report on these same measures to the State. The reported data would provide a comprehensive landscape of the quality of care provided by Medicaid and CHIP because the measures focus on a range of topics including access to primary and preventive care, maternal and perinatal health care, care of acute and chronic conditions, behavioral health care, dental and oral health care, long term services and supports, and overall experience of care.

At the current time, Child, Adult, and section 1945 Health Home Core Sets reporting is voluntary but highly encouraged. Under this proposed rule, our voluntary annual reporting requirements would become mandatory for the Child Core Set (CMS–10434 #26), behavioral health measures in the Adult Core Set (also CMS–10434 #26), and the section 1945 and forthcoming section 1945A Health Home Core Sets (CMS–10434 #47).[68] This proposed rule does not add, remove, or revise any of the existing measures in the current Core Sets. Annual updates to the Core Sets would continue to be made as required by sections 1139A and 1139B of the Act for the Child and Adult Core Sets and as proposed to be applied to both Health Home Core Sets as described in section I.C. of this proposed rule. Mandatory reporting of the Child Core Set and behavioral health measures on the Adult Core Set would impact all 50 States, DC, Puerto Rico, Guam, and the Virgin Islands as described in section II.A. of this proposed rule. The Health Home Core Sets requirements would apply if a State (as defined under section 1101 of the Act for purposes of Title XIX) has an approved Health Home SPA under section 1945 or 1945A of the Act, and the burden associated with the mandatory reporting requirement is not expected to influence the number of health home SPAs. Currently, 19 States and DC have a total of 34 Health Home SPAs.

Under this proposed rule, we anticipate that the mandatory reporting burden for States would increase in comparison to the current voluntary Core Set reporting burden including anticipated burden to States for system changes as a result of this proposed rule. This is due to the mandatory nature of the proposed data collection which may: increase the number of measures reported by States, adherence to the reporting guidance provided by CMS, and stratification of data by delivery system and demographic characteristics. However, many of the mandatory measures can be calculated from alternate data sources. For example, CMS has been working to use T–MSIS (CMS–R–284, OMB 0938–0345) reporting to generate measure reporting on behalf of States. Among the three Core Sets, approximately 50 measures would become mandatory, two of which CMS currently reports for States and Puerto Rico using alternate data sources, and the remainder would remain voluntary for States to report. CMS is currently assessing whether T–MSIS could be used to report any of the remaining measures. If so, this would reduce the number of measures that States would be required to calculate.

The data fields included in Core Set reporting templates are determined by the measure stewards who own the measures. CMS is not the measure steward for most measures, and therefore does not control the actual data fields for most of the measures on the Core Sets. As a result, the templates used for Core Sets reporting will not be published for public comment. Measure stewards implement a separate process for public comment during measure development and measurement updates. CMS also has recommendations in the CMS Measures Management System Blueprint for a similar process for public comment during measure development.[69]

1. ICRs Regarding Attestation of Mandatory Reporting (§ 437.20(a))

The following proposed changes will be submitted to OMB for their review under control number 0938–1188 (CMS–10434 #26 and CMS–10434 #47).

With the changes outlined in this proposed rule, each of the 54 States and territories that would be subject to the proposed Child and Adult Core Set reporting requirements would need to submit a single SPA attesting: that the agency would report on the Child and Adult Core Sets in accordance with the requirements in § 437.20(a).The approximately 20 States (with approximately 40 health home programs) with section 1945 Health Home SPAs and the approximately 10 States estimated to apply for section 1945A Health Home SPAs would need to submit a SPA attesting that the agency would report on the Health Home Core Sets in accordance with the requirements in § 437.20(a). Health Home SPAs would also include an attestation that the State will require its providers of health home services to report to the State on the measures that the State has to report in accordance with the requirements in § 437.20(a).

We estimate it would take a business operations specialist 2 hours at $75.32/hr and a general operations manager 1 hour at $120.90/hr to update and submit the State or territory SPA to CMS for review. We estimate a one-time burden of 162 hours (54 States and territories × 3 hr/response) at a cost of $14,688 (54 States and territories × ([2 hr/response × $75.32/hr] + [1 hr/response × $120.90/hr])). Taking into account the Federal contribution to Medicaid and CHIP program administration, the estimated State share of this cost would be $7,332 ($14,663 × 0.50).

2. ICRs Regarding Core Set of Children's Health Care Quality Measures for Medicaid and CHIP (Child Core Set) (Part 437, Subpart A)

The following proposed changes will be submitted to OMB for their review

[68] Core Set Measure lists: *https://www.medicaid.gov/medicaid/quality-of-care/index.html.*

[69] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/MMS-Blueprint.*

under control number 0938–1188 (CMS–10434 #26).

As required by section 50102(b) of the Bipartisan Budget Act of 2018, a new subparagraph (B) was added to section 1139A(a)(4) of the Act to mandate annual reporting of the Child Core Set beginning with the annual State report on fiscal year 2024. As referenced in in section II.A. of this proposed rule, mandatory reporting of the Child Core Set would be required for all 50 States, DC, Puerto Rico, Guam, and the Virgin Islands. The data collection, as explained in section II.C.1 of this proposed rule, would be required to include: reporting on all mandatory measures following the reporting guidance provided by CMS; populations, identified by CMS, for which States must report on each measure such as specified delivery systems, health care settings, and beneficiaries dually eligible for Medicare and Medicaid; and the stratification of certain measures by factors such as race, ethnicity, sex, age, rural/urban status, disability and language.

The burden for each respondent is dependent on the State reporting structure and the status of the State's Medicaid and CHIP programs. Currently, there are 14 States and territories with Medicaid expansion CHIP only, 2 States with separate CHIPs, and 38 States with both Medicaid Expansion and separate CHIPs.[70] We expect the burden for States with separate CHIPs or both types of CHIPs to be higher than for States with Medicaid expansion CHIP only. This is because States with separate CHIPs or both types of CHIPs would have to report data for children enrolled across both Medicaid and CHIP. This would result in more complex data sets and would require the State to conduct the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey twice, once for Medicaid and once for CHIP.[71] To account for the added reporting and survey effort for States with separate CHIP or with both Medicaid expansion and separate CHIPs, we have applied a multiplier of 1.5 to the burden hours for Child Core Set measure reporting and a multiplier of 2 to the burden estimate for conducting and reporting CAHPS survey data.

For the 14 States with Medicaid expansion CHIP only, we expect that the reporting of approximately 25 Child Core Set measures would take: 118 hours at $91.96/hr for a computer programmer to re-program and synthesize the data; 20 hours at $93.44/hr for a statistician to conduct data sampling; 79 hours at $120.90/hr for a general operations manager to analyze the data; 210.5 hours at $35.92/hr for a data entry worker to input the data; and 8.75 hours at $190.24/hr for a chief executive to verify, certify, and approve a State data submission to CMS.[72] We estimate an annual burden of 6,108 hours (436.25 hr × 14 responses) at a cost of $440,957 (14 responses × ([118 hr × $91.96/hr] + [20 hr × $93.44/hr] + [79 hr × $120.90/hr] + [210.5 hr × $35.92/hr] + [8.75 hr × $190.24/hr])).

Additionally, we expect the new reporting mandate to require vendor contract modifications in all 14 States. We expect the contract modifications would take 6 hours at $120.90/hr for a general operations manager to draft a vendor contract and 2 hours at $190.24/hr for a chief executive to review and approve a modified vendor contract. We estimate an annual burden of 112 hours (8 hr/response × 14 responses) at a cost of $15,482 (14 responses × ([6 hr × $120.90/hr] + [2 hr × $190.24/hr])).

In aggregate, for States with Medicaid expansion CHIP only, we estimate an annual State burden of 6,220 hours (6,108 hr + 112 hr) at a cost of $456,439 ($440,957 + $15,482).

For the 40 States (with separate CHIPs (2) and States with both Medicaid Expansion and separate CHIPs (38)) we expect a higher burden because States with separate CHIP programs or combination CHIP programs would have to report data for children enrolled across both Medicaid and CHIP programs. We expect the Child Core Set of approximately 25 measures would take: 211 hours at $91.96/hr for a computer programmer to collect and synthesize the data; 40 hours at $93.44/hr for a statistician to conduct data sampling; 133 hours at $120.90/hr for a general operations manager to analyze the data; 419 hours at $35.92/hr for a data entry worker to input the data; and 13 hours at $190.24/hr for a chief executive to verify, certify, and approve a State data submission to CMS. We estimate an annual burden of 32,640 hours (816 hr × 40 responses) at a cost of $2,269,778 (40 responses × ([211 hr × $91.96/hr] + [40 hr × $93.44/hr] + [133 hr × $120.90/hr] + [419 hr × $35.92/hr] + [13 × $190.24/hr])).

Additionally, we expect the new reporting mandate would require vendor contract modifications. We expect the contract modifications to take 6 hours at $120.90/hr for a general operations manager to draft a vendor contract and 2 hours at $190.24/hr for a chief executive to review and approve a modified vendor contract. We estimate an annual burden of 320 hours (8 hr × 40 responses) at a cost of $44,235 (40 responses × ([6 hr × $120.90/hr] + [2 hr × $190.24/hr])).

In aggregate, for States with separate CHIPs and States with both Medicaid Expansion and separate CHIPs, we estimate an annual State burden of 32,960 hours (32,640 hr + 320 hr) at a cost of $2,314,013 ($2,269,778 + $44,235).

The CAHPS measure is the only mandatory measure on the Child Core Set which would include a burden on beneficiaries. We estimate it would take 20 minutes (0.33 hr) at $19.95/hr for a Medicaid or CHIP beneficiary to complete the CAHPS Health Plan Survey (Child Core Set includes: Child version including Medicaid and Children with Chronic Conditions Supplemental Items). The collected survey data are incorporated into a Child Core Set measure.

For the 14 States with Medicaid expansion CHIP programs only, the survey would be conducted once each year. We estimate an annual per State beneficiary burden of 136 hours (0.33 hr per response × 411 beneficiary responses/State) at a cost of $2,713 (136 hr × $19.95/hr).

States with combination CHIP programs or separate CHIP program only would conduct the survey twice each year to account for the separate Medicaid and CHIP populations. There are 40 States and territories with this program structure. We estimate an annual per State beneficiary burden of 271 hours (0.33 hr per response × 822 beneficiary responses/State) at a cost of $5,406 (271 hr × $19.95/hr).

For States to administer the survey, we estimate an ongoing aggregate beneficiary burden of 12,749 hours [(136 hours × 14 responses) + (271 hours × 40 responses)] at a cost of $254,243 [($2,713 × 14 responses) + ($5,406 × 40 responses)].

3. ICRs Regarding Core Set of Adult Health Care Quality Measures for Medicaid (Adult Core Set) (Part 437, Subpart A)

The following proposed changes will be submitted to OMB for their review under control number 0938–1188 (CMS–10434 #26).

[70] *https://www.medicaid.gov/chip/downloads/chip-map.pdf.*

[71] The Agency for Healthcare Research and Quality is the measure steward for the CAHPS survey (CAHPS health plan database OMB Control No.: 0935–0165).

[72] Child Core Set: *https://www.medicaid.gov/medicaid/quality-of-care/performance-measurement/adult-and-child-health-care-quality-measures/childrens-health-care-quality-measures/index.html.*

As required by the SUPPORT Act, a new subparagraph (b)(3)(B) was added to section 1139B of the Act, to make mandatory the annual reporting of behavioral health measures in the Adult Core Set beginning with the annual State report on fiscal year 2024. As referenced in section II.A. of this proposed rule, mandatory reporting of the Adult Core Set would be required for all 50 States, DC, Puerto Rico, Guam, and the Virgin Islands. The data collection, as explained in section II.C.1 of this proposed rule, would be required to include: reporting on all mandatory measures following the reporting guidance provided by CMS; populations, identified by CMS, for which States must report on each measure such as specified delivery systems, health care settings, and beneficiaries dually eligible for Medicare and Medicaid; and the stratification of certain measures by factors such as race, ethnicity, sex, age, rural/urban status, disability and language.

For the behavioral health measures on the Adult Core Set, consisting of approximately 13 measures, we estimate it would take: 85 hours at $91.96/hr to for a computer programmer to re-program and synthesize the data; 20 hours at $93.44/hr for a statistician to conduct data sampling; 46 hours at $120.90/hr for a general operations manager to analyze the data; 207 hours at $35.92/hr for a data entry worker to input the data; and 4 hours at $190.24/hr for a chief executive to verify, certify, and approve a State data submission to CMS.[73] We estimate an annual burden of 19,548 hours (362 hr/response × 54 responses) at a cost of $1,265,933 (54 responses × ([85 hr × $91.96/hr] + [20 hr × $93.44/hr] + [46 hr × $120.90/hr] + [207 hr × $35.92/hr] + [4 × $190.24/hr])).

Additionally, we expect the new reporting mandate would require vendor contract modifications. We expect the contract modifications to take 6 hours at $120.90/hr for a general operations manager to draft a vendor contract and 2 hours at $190.24/hr for a chief executive to review and approve a modified vendor contract. We estimate a one-time burden of 432 hours (8 hr × 54 responses) at a cost of $59,718 (54 responses × ([6 hr × $120.90/hr) + [2 hr × $190.24/hr])).

In aggregate, we estimate an annual State burden of 19,980 hours (19,548 hr + 432 hr) at a cost of $1,325,650 ($1,265,933 + $59,718).

The CAHPS measure is the only mandatory measure on the Adult Core Set which would include a burden on beneficiaries.[74] We estimate it would take 20 minutes (0.33 hr) at $19.95/hr for a Medicaid beneficiary to complete a CAHPS Health Plan survey. The collected survey data is incorporated into one of the behavioral health measures on the Adult Core Set. For each State Medicaid program, we estimate an annual per State beneficiary burden of 136 hours (0.33 hr/response × 411 beneficiary responses/State) at a cost of $2,713 (136 hr × $19.95/hr). For States to administer the survey, In aggregate, we estimate an annual beneficiary burden of 7,324 hours (136 hr/State × 54 States) at a cost of $146,513 ($2,713 per State × 54 States).

4. ICRs Regarding Core Sets of Health Home Quality Measures for Medicaid (Health Home Core Sets) (Part 437, Subpart A)

The following proposed changes will be submitted to OMB for their review under control number 0938–1188 (CMS–10434 #47). The burden associated with health home providers submitting data to the States is not included in this ICR and is covered under control number 0938–1188 (CMS–10434 #22); however, we will be submitting a revision to that burden estimate to cover additional benefits and requirements that have been added under section 1945A of the Act.

Sections 1945(g) and 1945A(g)(1)(B) of the Act require health home providers to report to States on measures for determining the quality of health home services provided, as a condition for payment of such services. Sections 1945(c)(4)(B) and 1945A(g)(2) of the Act require States to report on certain health home information to the Secretary, and CMS relies on these authorities, as well as on section 1902(a)(6) of the Act, in proposing to require all States implementing the section 1945 or section 1945A health home benefits to report on mandatory measures in the Health Home Core Sets. Additionally, to enable this State reporting, States would be required to require their health home providers to report on these measures, too, consistent with sections 1945(g) and 1945A(g)(1)(B) of the Act. As discussed in section II.A. of this proposed rule, State reporting of the Health Home Core Sets would be required only if the State (as defined in section 1101 for purposes of Title XIX) has an approved health home SPA under sections 1945 or 1945A of the Act. The data collection, as explained in section II.C.1 of this proposed rule, would be required to include: reporting on all mandatory measures following the reporting guidance provided by CMS; populations on which States must report for each measure; and the stratification of data under certain measures by factors such as race, ethnicity, sex, age, rural/urban status, disability and language.

The burden for each respondent is dependent on the State's adoption of Health Home programs. We expect approximately 20 States to operate approximately 40 Health Home programs under section 1945 authority and approximately 10 States to operate Health Home programs under section 1945A authority.

Section 1945 Authority: The section 1945 Health Home Core Set for section 1945 programs consists of approximately 13 measures. For each respondent with this program, we estimate it would take: 52 hours at $91.96/hr for a computer programmer to collect and synthesize the data; 52 hours at $120.90/hr for a general operations manager to analyze the data; 6.5 hours at $35.92/hr for a data entry worker to input the data; and 6.5 hours at $190.24/hr for a chief executive to verify, certify, and approve a State data submission to CMS. We estimate an annual burden of 4,680 hours (117 hr × 40 responses) at a cost of $501,560 (40 responses × ([52 hr × $91.96/hr] + [52 hr × $120.90/hr] + [6.5 hr × $35.92/hr] + [6.5 × $190.24/hr])).

Additionally, we expect the new reporting mandate would require vendor contract modifications. We expect the contract modifications to take 6 hours at $120.90/hr for a general operations manager to draft a vendor contract and 2 hours at $190.24/hr for a chief executive to review and approve a modified vendor contract. We estimate a one-time burden of 320 hours (8 hr × 40 responses) at a cost of $44,235 (40 responses × ([6 hr × $120.90/hr) + [2 hr × $190.24/hr])).

In aggregate, we estimate an annual burden of 5,000 hours (5,680 hr + 320 hr) at a cost of $545,795 ($501,560 + $44,235).

Note that the section 1945 Health Home Core Set does not include a survey-based measure; thus, there are no burden and cost estimates associated with a survey, such as the costs of a statistician to conduct sampling and weighting for the survey.

Section 1945A Authority: CMS anticipates that the section 1945A Health Home Core Set for section 1945A

[73] *https://www.medicaid.gov/medicaid/quality-of-care/performance-measurement/adult-and-child-health-care-quality-measures/adult-health-care-quality-measures/index.html.*

[74] The Agency for Healthcare Research and Quality is the measure steward for the CAHPS survey (CAHPS health plan database OMB Control No.: 0935–0165).

programs would consist of approximately 7 measures. For each respondent with this program, we estimate it would take: 28 hours at $91.96/hr for a computer programmer to collect and synthesize the data; 28 hours at $120.90/hr for a general operations manager to analyze the data; 3 hours at $35.92/hr for a data entry worker to input the data; and 3 hours at $190.24/hr for a chief executive to verify, certify, and approve a State data submission to CMS. We estimate an annual State burden of 620 hours (62 hr/response × 10 responses) at a cost of $66,386 (10 responses × ([28 hr × $91.96/hr] + [28 hr × $120.90/hr] + [3 hr × $35.92/hr] + [3 × $190.24/hr])).

Additionally, we expect the new reporting mandate would require vendor contract modifications. We expect the contract modifications to take 6 hours at $120.90/hr for a general operations manager to draft a vendor contract and 2 hours at $190.24/hr for a chief executive to review and approve a modified vendor contract. We estimate a one-time burden of 80 hours (8 hr × 10 responses) at a cost of $11,059 (10 responses × ([6 hr × $120.90/hr) + [2 hr × $190.24/hr])).

In aggregate, we estimate an annual State burden of 700 hours (620 hr + 80 hr) at a cost of $77,444 ($66,386 + $11,059).

Note that CMS anticipates that the section 1945A Health Home Core Set would not include a survey-based measure; thus, there are no burden and cost estimates associated with a survey, such as the costs of a statistician to conduct sampling and weighting for the survey.

C. Summary of Proposed Requirements and Annual Burden Estimates

Table 2 sets out our proposed annual burden estimates.

TABLE 2—SUMMARY OF ANNUAL REQUIREMENTS AND BURDEN

[(OMB Control Number: 0938–1188]

Section 437 under Title 42 of the CFR	Number of respondents	Total responses	Time per response (hours)	Total time (hours)	Labor cost ($/hr)	Total cost ($)	Adjusted cost ($) (50% FMAP or FFP)
CMS–10434 #26							
§ 437.20 One-time SPA Submission*	54	54	2	108	181	9,774	4,887
§ 437.15 (Child Core Set)	54	54	Varies	39,180	Varies	2,770,452	1,385,226
§ 437.15 (Adult Core Set)	54	54	370	19,980	24,549	1,325,650	662,825
Subtotal (#26)	54	54	Varies	59,268	Varies	4,105,876	2,052,938
CMS–10434 #47							
§ 437.20 One-time SPA Submission*	54	54	1	54	91	4,914	2,457
§ 437.15 (1945 Health Home Core Set)	40	40	125	5,000	13,645	545,795	272,898
§ 437.15 (1945A Health Home Core Set)	10	10	70	700	7,744	77,440	38,720
Subtotal (#47)	50	50	Varies	5,754	Varies	628,149	314,075
Total	Varies	54	Varies	65,022	Varies	4,734,025	2,367,013

*States will be required to submit a single SPA that attests that the State will be in compliance with Child, Adult, and Health Home Core Sets reporting. Every State would complete the SPA and States with a Health Home would only have to identify as applicable.

D. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection requirements and burden. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit the CMS website at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** section of this proposed rule and identify the rule (CMS–2440–P) the ICR's CFR citation, and OMB control number.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule. The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, small pharmaceutical manufacturers participating in the Medicaid Drug Rebate Program, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $8.0 million to $41.5 million in any 1 year. Individuals and

States are not included in the definition of a small entity. This proposed rule applies to new mandatory reporting requirements for information collection from State Medicaid and CHIP agencies who do not meet the definition of a small business. Therefore, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on any small entities. In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. This proposed rule applies to State Medicaid and CHIP agencies and would not add requirements to rural hospitals or other small providers. Therefore, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule with comment period would not have a significant impact on the operations of small rural hospitals. Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately $165 million. This rule would have no consequential effect on State, local, or tribal governments or on the private sector. Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any substantial direct compliance costs on State or local governments, preempt State law, or otherwise have Federalism implications, the requirements of Executive Order 13132 are not applicable. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure,

Administrator of the Centers for Medicare & Medicaid Services,

Approved this document on July 5, 2022.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 437

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Amend § 433.112 by revising paragraph (b)(12) to read as follows:

§ 433.112 FFP for design, development, installation or enhancement of mechanized processing and information retrieval systems.

* * * * *

(b) * * *

(12) The agency ensures alignment with, and incorporation of, standards and implementation specifications for health information technology adopted by the Office of the National Coordinator for Health IT in 45 CFR part 170, subpart B. The agency also ensures alignment with: the HIPAA privacy, security, breach notification and enforcement regulations in 45 CFR parts 160 and 164; and the transaction standards and operating rules adopted by the Secretary under HIPAA and/or section 1104 of the Affordable Care Act. The agency meets accessibility standards established under section 508 of the Rehabilitation Act, or standards that provide greater accessibility for individuals with disabilities, and compliance with Federal civil rights laws; standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act; standards and protocols for reporting on the Child and Adult Core Sets as adopted by the Secretary under sections 1139A, 1139B, and 1902(a)(6) of the Act, and 42 CFR part 437 subpart A; and standards and protocols for reporting on the Health Home Core Sets as adopted by the Secretary under sections 1902(a)(6), 1945(c)(4)(B) and (g), and 1945A(g) of the Act and 42 CFR part 437 subpart A.

* * * * *

■ 3. Part 437 is added to read as follows:

PART 437—MEDICAID QUALITY

Subpart A—Child, Adult, and Health Home Health Care Quality Measures

Subpart B [Reserved]

Authority: 42 U.S.C. 1320b–9a, 42 U.S.C. 1320b–9b, 42 U.S.C. 1396a(a)(6), 42 U.S.C. 1396w–4, and 42 U.S.C. 1396w–4a.

Subpart A—Child, Adult, and Health Home Health Care Quality Measures

§ 437.1 Basis, scope, purpose and applicability.

(a) *Statutory basis.* This subpart is based on sections 1139A, 1139B, 1902(a)(6), 1945(c)(4)(B), 1945(g), and 1945A(g) of the Act.

(b) *Scope.* This subpart sets forth specifications for issuance and updates to the Core Set of Children's Health Care Quality Measures for Medicaid and CHIP (Child Core Set), the Core Set of Adult Health Care Quality Measures for Medicaid (Adult Core Set), and the 1945 and 1945A Core Sets of Health Home Quality Measures for Medicaid (Health Home Core Sets) by the Secretary. It also sets forth requirements related to annual reporting by States of measures in all of the Core Sets, and requirements related to provider reporting to States on the Health Home Core Sets.

(c) *Purpose.* (1) The purpose of the Medicaid and CHIP Child Core Set and the Medicaid Adult Core Set is to measure the overall national quality of care for beneficiaries, monitor performance at the State-level, and improve the quality of health care.

(2) The purpose of the Health Home Core Sets is to measure the overall program quality of health home services for Medicaid beneficiaries enrolled in a health home program under section 1945 or 1945A of the Act, monitor the impact of these two optional State plan benefits, monitor performance of these two benefits at the program level, and improve the quality of health care.

(d) *Applicability.* The provisions of this subpart apply as follows: (1) For the Child and Adult Core Sets, State includes the 50 States, the District of

Columbia, Puerto Rico, the Virgin Islands, and Guam.

(2) For the Health Home Core Sets, State includes any State (as defined under section 1101 of the Act for purposes of Title XIX of the Act) with an approved Medicaid Health Home State Plan Amendment under section 1945 or 1945A of the Act.

(e) *Applicability dates.* States must comply with the requirements of this subpart by no later than State reporting on the 2024 Core Sets, which must be submitted and certified by December 31, 2024.

§ 437.5 Definitions.

As used in this subpart—

Adult Core Set means the Core Set of Adult Health Care Quality Measures for Medicaid established and updated annually as described in § 437.10(a).

Attribution rules means the process Medicaid and CHIP and other payers use to assign beneficiaries to a specific health care program or delivery system for the purpose of calculating the measures on the Core Sets.

Behavioral health means a beneficiary's whole emotional and mental well-being, which includes, but is not limited to, the prevention and treatment of mental disorders including substance use disorders.

Behavioral health measure means a quality measure that could be used to evaluate the quality of and improve the health care provided to beneficiaries with, or at-risk for a behavioral health disorder(s).

Child Core Set means the Core Set of Health Care Quality Measures for Children in Medicaid and CHIP, established and updated annually as described in § 437.10(a).

Core Sets means the Child Core Set, the Adult Core Set, the section 1945 Health Home Core Set, and the section 1945A Health Home Core Set, collectively.

Health Home Core Sets means, collectively, the two Core Sets of Health Home Quality Measures related to the two Medicaid health home benefits under sections 1945 and 1945A of the Act, established and updated annually as described in § 437.10(a).

Standardized format means the format provided by the reporting system that States are required to utilize to submit Core Sets data to CMS.

1945 Health Home Core Set means the Core Set of Health Home Quality Measures related to the Medicaid health home benefit under section 1945 of the Act, established and updated annually as described in § 437.10(a).

1945A Health Home Core Set means the Core Set of Health Home Quality Measures related to the Medicaid health home benefit under section 1945A of the Act, established and updated annually as described in § 437.10(a).

§ 437.10 Child, Adult, and Health Home Core Sets.

(a) The Secretary shall—

(1) Identify, and annually update, the quality measures to be included in the Core Sets;

(2) Consult annually with States and other interested parties identified in paragraph (e) of this section to—

(i) Establish priorities for the development and advancement of the Core Sets;

(ii) Identify any gaps in the measures included in the Core Sets;

(iii) Identify measures which should be removed as they no longer strengthen the Core Sets; and

(iv) Ensure that all measures included in the Core Sets reflect an evidence-based process including testing, validation, and consensus among interested parties; are meaningful for States; are feasible for State-level and/or Health Home program level reporting as appropriate; and represent minimal additional burden to States.

(3) In consultation with States, develop and update annually the reporting guidance described in paragraph (b) of this section.

(b) Annual reporting guidance will include all of the following:

(1) Identification of all measures in all the Core Sets, including:

(i) Measures newly added and measures removed from the prior year's Core Sets;

(ii) Measures included in the Adult Core Set that are identified as behavioral health measures;

(iii) The specific measures for which reporting is mandatory for the Child, Adult, and 1945 and 1945A Health Home Core Sets;

(iv) The measures for which the Secretary will complete reporting on behalf of States and the measures for which States may elect to have the Secretary report on their behalf; and

(v) The measures, if any, for which the Secretary will provide States with additional time to report, as well as how much additional time the Secretary will provide, in accordance with paragraph (c) of this section.

(2) Guidance to States on how to collect and calculate the data on the Core Sets.

(3) Standardized format for reporting measure data required under this subpart.

(4) Procedures that State agencies must follow in reporting measure data required under this subpart.

(5) Identification of the populations for which States must report the measures identified by the Secretary under paragraph (b)(1) of this section, including, but not limited to beneficiaries—

(i) Receiving services through specified delivery systems, such as those enrolled in a managed care plan or receiving services on a fee-for-service basis;

(ii) Receiving services through specified health care settings and/or provider types, such as hospitals, outpatient facilities, Federally Qualified Health Centers and other safety-net providers, rural health clinics, Indian Health Service, Tribes and Tribal Organizations, or Urban Indian Organizations; and

(iii) Who are dually eligible for Medicare and Medicaid, including beneficiaries whose medical assistance is limited to payment of Medicare premiums and/or cost sharing.

(6) Attribution rules for determining how States must report on measures for beneficiaries who are included in more than one population, as described in paragraph (b)(5) of this section, during the reporting period.

(7) The subset of measures among the measures in the Child Core Set, among the behavioral health measures in the Adult Core Set, and among the measures in the Health Home Core Sets that must be stratified by race, ethnicity, sex, age, rural/urban status, disability, language, or such other factors as may be specified by the Secretary and informed by annual consultation with States and interested parties in accordance with paragraphs (a)(2) and (d) of this section.

(c) In issuing the guidance described in paragraph (b) of this section, the Secretary may provide that mandatory State reporting for certain measures and reporting for certain populations of beneficiaries will be phased in over a specified period of time, taking into account the level of complexity required for such State reporting; and

(d) In specifying which measures, and by which factors, States must report stratified measures consistent with paragraph (b)(7) of this section, the Secretary will take into account whether stratification can be accomplished based on valid statistical methods and without risking a violation of beneficiary privacy and, for measures obtained from surveys, whether the original survey instrument collects the variables necessary to stratify the measures, and such other factors as the Secretary determines appropriate; the Secretary will require stratification of 25 percent of the measures on each of the Core Sets (the Child Core Set, behavioral health

measures within the Adult Core Set, and Health Homes Core Sets) for which the Secretary has specified that reporting should be stratified by the second year of annual reporting after the effective date of these regulations, 50 percent of such measures for the third and fourth years of annual reporting after the effective date of these regulations, and 100 percent of measures beginning in the fifth year of annual reporting after the effective date of these regulations; and

(e) For purposes of paragraph (a)(2) of this section, the Secretary must consult with interested parties as described in this paragraph to include the following:

(1) States.

(2) Pediatricians, children's hospitals, and other primary and specialized pediatric health care professionals (including members of the allied health professions) who specialize in the care and treatment of children and adolescents, particularly children with special physical, mental, and developmental health care needs.

(3) Dental professionals, including pediatric dental professionals.

(4) Health care providers that furnish primary health care to children and families who live in urban and rural medically underserved communities or who are members of distinct population sub-groups at heightened risk for poor health outcomes.

(5) National organizations representing children and/or adolescents, including children with disabilities and children with chronic conditions.

(6) National organizations representing consumers and purchasers of children's health care;

(7) National organizations and individuals with expertise in pediatric health quality measurement.

(8) Voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence-based measures of health care.

(9) With respect only to guidance on the Health Home Core Sets, providers of health home services under sections 1945 and 1945A of the Act.

(10) Such other interested parties as the Secretary may determine appropriate.

§ 437.15 Annual reporting on the Child, Adult, and Health Home Core Sets.

(a) *General rules.* (1) Except as provided in paragraph (a)(2) and (4) of this section, the agency—

(i) Must report annually, by December 31st, on all measures on the Child Core Set and the behavioral health measures in the Adult Core Set that are identified by the Secretary pursuant to § 437.10(b)(1)(iii) of this subpart;

(ii) Must report annually, by December 31st, on all measures in the 1945 or 1945A Health Home Core Sets (as applicable) that are identified by the Secretary pursuant to § 437.10(b)(1)(iii) of this subpart, if the agency has elected to offer health home services under the State plan under section 1945 or section 1945A of the Act, and if the applicable health home program has an effective date and has been implemented more than 6 months prior to the December 31st reporting deadline; and

(iii) May report on all other measures in the Adult Core Set and Health Home Core Sets that are not described in paragraphs (a)(1)(i) and (ii) of this section.

(2) Measures identified per § 437.10(b)(1)(iv) will be reported by the Secretary on behalf of the agency.

(3) The agency must adhere to the reporting guidance described in § 437.10(b), except as described in paragraph (a)(4) of this section, when reporting on measures in the Core Sets.

(4) In reporting on all Core Sets measures, the agency may, but is not required to:

(i) Report on the measures identified by the Secretary pursuant to § 437.10(c) for which reporting will be, but is not yet required (that is, reporting has not yet been phased-in).

(ii) Report on the populations identified by the Secretary pursuant to § 437.10(c) for whom reporting will be, but is not yet required.

(b) *Reporting of Medicaid and CHIP beneficiaries.* In States that have implemented a separate child health program (''separate CHIP'') under part 457 of this chapter:

(1) The agency must report, in accordance with attribution rules established by the Secretary pursuant to § 437.10(b)(6), on measures included in the Child Core Set for—

(i) Individuals enrolled in Medicaid who are within the measure specified age range for each measure (inclusive of individuals for whom the State claims the enhanced Federal Medicaid Assistance Percentage under § 433.11(a) of part 433 of this subchapter) as per reporting guidance described in paragraph § 437.10(b)(2); and

(ii) Individuals who are in the measure specified age range for each measure who are enrolled in Medicaid or the State's separate CHIP beneficiaries as per reporting guidance described in paragraph § 437.10(b)(2).

(2) If the separate CHIP elects to report on Adult Core Set measures for individuals enrolled in their separate CHIP, the agency must report on individuals described in paragraphs (b)(1)(i) and (ii) of this section.

§ 437.20 State plan requirements.

(a) The State plan must specify that:

(1) The agency will report on the Child and Adult Core Sets in accordance with § 437.15;

(2) If health home services are covered under the State plan pursuant to section 1945 or 1945A of the Act, the agency will report on the applicable Health Home Core Set or Sets in accordance with § 437.15; and;

(3) If health home services are covered under the State plan pursuant to section 1945 or 1945A of the Act, the agency requires health home services providers to report to the agency on the measures in the applicable Health Home Core Set or Sets that are identified by the Secretary pursuant to § 437.10(b)(1)(iii), as a condition for receiving payment for health home services.

(b) [Reserved]

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 4. The authority citation for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 5. Amend § 457.700 by:

■ a. In paragraph (a)(2) removing the word ''and'' at the end of the paragraph;

■ b. In paragraph (a)(3) removing the period at the end of the paragraph and adding in its place ''; and''; and

■ c. Adding new paragraph (a)(4).

The addition reads as follows:

§ 457.700 Basis, scope, and applicability.

* * * * *

(a) * * *

(4) Section 1139A and 1139B of the Act, which set forth the requirements for child and adult health quality measures and reporting.

* * * * *

■ 6. Add § 457.770 to subpart G to read as follows:

§ 457.770 Reporting on Health Care Quality Measures.

(a) *Reporting the Child Core Set.* The State must report on the Core Set of Health Care Quality Measures for Children in Medicaid and CHIP (Child Core Set) for a separate child health program in accordance with part 437 of this chapter.

(b) *Reporting the Adult Core Set.* The State may elect to report on the Core Set of Adult Health Care Quality Measures in Medicaid (Adult Core Set) established by the Secretary in accordance with part 437 of this chapter. If the State reports measures on the Adult Core Set, such reporting must

be in accordance with part 437 of this chapter, except that reporting on behavioral health measures on the Adult Core Set is not mandatory.

(c) *Reporting of Medicaid and CHIP beneficiaries.* The State must report measures included in the Child Core Set and, if applicable, Adult Core Set both separately from and combined with Medicaid beneficiaries (including title XXI funded Medicaid beneficiaries) in accordance with § 437.15(b) of this chapter.

Dated: August 15, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–17810 Filed 8–18–22; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 87, No. 161
Monday, August 22, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 21, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Natural Resource Conservation Service

Title: Partnership for Climate-Smart Commodities.

OMB Control Number: 0578–0031.

Summary of Collection: USDA has directed the Farm Production and Conservation (FPAC) mission area and NRCS to implement Partnerships for Climate-Smart Commodities to support the production and marketing of climate-smart commodities through a set of pilot projects that provide voluntary incentives through partners to producers and landowners, including early adopters, to implement climate-smart production practices, activities, and systems on working lands; measure and quantify, monitor and verify the carbon and greenhouse gas (GHG) benefits associated with those practices; and develop markets and promote the resulting climate-smart commodities. Partnerships for Climate-Smart Commodities is using the funds and authorities of the Commodity Credit Corporation (CCC) (15 U.S.C. 714–714f).

Need and Use of the Information: NRCS uses the information to determine whether recipients meet the eligibility requirements to be a recipient of grant funds and to report on the progress related to the funding opportunity requirements. Lack of adequate information to make the determination could result in the improper administration and appropriation of Federal grant funds.

Description of Respondents: Businesses or other for profits; Farms; Not-for-profit institutions.

Number of Respondents: 500.

Frequency of Responses: Reporting: Semi-annually.

Total Burden Hours: 14,370.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–18006 Filed 8–19–22; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Eagle Creek National Wild and Scenic River, Mt. Hood National Forest, Clackamas County, Oregon

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Eagle Creek National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: John Matthews, Regional Land Surveyor, by telephone at 503–808–2420 or via email at *john.matthews@usda.gov.* Alternatively, Michelle Lombardo on the Mt. Hood National Forest by telephone at 971–303–2083 or via email at *michelle.lombardo@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Eagle Creek Wild and Scenic River boundary description is available for review on the Forest Service website: (*https://www.fs.usda.gov/main/mthood/landmanagement/planning*).

Due to COVID–19 health and safety protocols to protect employees and visitors, some Forest Service offices may be closed to the public; please contact the appropriate Forest Service office to determine if they are open or schedule an appointment prior to arrival. The Eagle Creek Wild and Scenic River boundary is available for review at the following offices if arrangements are made in advance: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, by telephone 800–832–1355; Pacific Northwest Regional Office, 1220 SW Third Avenue, Portland, OR 97204, by telephone 503–808–2468; and the Mt. Hood National Forest Supervisor's Office, 16400 Champion Way, Sandy, OR 97055, by telephone 503–668–1700.

The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) of March 30, 2009, designated Eagle Creek, Oregon as a National Wild and

Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Christopher French,

Deputy Chief, National Forest System, Forest Service.

[FR Doc. 2022–17959 Filed 8–19–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Cache la Poudre National Wild and Scenic River, Roosevelt National Forest and Rocky Mountain National Park, Larimer County, Colorado

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary for the Cache la Poudre National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: David Tomaschow, Regional Boundary and Title Program Manager, by telephone at 970–219–5740 or via email at *david.tomaschow@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Cache la Poudre Wild and Scenic River boundary description is available for review on the Forest Service website: (*https://www.fs.usda.gov/arp/*).

Due to COVID–19 health and safety protocols to protect employees and visitors, some Forest Service offices may be closed to the public; please contact the appropriate Forest Service office to determine if they are open or schedule an appointment prior to arrival. The Cache la Poudre Wild and Scenic River boundary is available for review at the following offices if arrangements are made in advance: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, by telephone 800–832–1355; Rocky Mountain Regional Office, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401, by telephone 303–275–5350; and the Arapaho and Roosevelt National Forests Office, 2150 Centre Avenue, Building E, Fort Collins, CO 80526, by telephone 970–295–6700.

Public Law 99–590 of October 30, 1986, designated Cache la Poudre, Colorado as a National Wild and Scenic River, to be administered by the Secretary of Agriculture and the Secretary of Interior. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Christopher French,

Deputy Chief, National Forest System, Forest Service.

[FR Doc. 2022–17960 Filed 8–19–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Zig Zag National Wild and Scenic River, Mt. Hood National Forest, Clackamas County, Oregon

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Zig Zag National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: John Matthews, Regional Land Surveyor, by telephone at 503–808–2420 or via email at *john.matthews@usda.gov.* Alternatively, Michelle Lombardo on the Mt. Hood National Forest by telephone at 971–303–2083 or via email at v*michelle.lombardo@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Zig Zag Wild and Scenic River boundary description is available for review on the Forest Service website: (*https://www.fs.usda.gov/main/mthood/landmanagement/planning*).

Due to COVID–19 health and safety protocols to protect employees and visitors, some Forest Service offices may be closed to the public; please contact the appropriate Forest Service office to determine if they are open or schedule an appointment prior to arrival. The Zig Zag Wild and Scenic River boundary is available for review at the following offices if arrangements are made in advance: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, by telephone 800–832–1355; Pacific Northwest Regional Office, 1220 SW Third Avenue, Portland, OR 97204, by telephone 503–808–2468; and Mt. Hood National Forest Supervisor's Office, 16400 Champion Way, Sandy, OR 97055, by phone 503–668–1700.

The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) of March 30, 2009, designated Zig Zag River, Oregon as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Christopher French,

Deputy Chief, National Forest System, Forest Service.

[FR Doc. 2022–17967 Filed 8–19–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Census Scientific Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including decennial, economic, field operations, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: The virtual meeting will be held on:

- Thursday, September 29, 2022, from 11 a.m. to 5 p.m. EDT, and
- Friday, September 30, 2022, from 11 a.m. to 5 p.m. EDT.

ADDRESSES: Please visit the Census Advisory Committee website at *https://www.census.gov/about/cac/sac/meetings/2022-09-meeting.html,* for the CSAC meeting information, including the agenda, and how to join the meeting.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides scientific and technical expertise to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (title 5, United States Code, appendix 2, section 10).

All meetings are open to the public. Public comments will be accepted in writing to *shana.j.banks@census.gov* (subject line ''2022 CSAC Fall Virtual Meeting Public Comment''). A brief period will be set aside during the meeting to read public comments received in advance of 12 p.m. EDT, September 29, 2022. Any public comments received after the deadline will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: August 16, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–18028 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–07–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; Survey of Income and Program Participation

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 8, 2021 during a 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Survey of Income and Program Participation.

OMB Control Number: 0607–1000.

Form Number(s): None.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 63,000.

Average Hours per Response: 63 minutes.

Burden Hours: 66,150.

Needs and Uses: The SIPP collects information about a variety of topics including demographics, household composition, education, nativity and citizenship, health insurance coverage, Medicaid, Medicare, employment and earnings, unemployment insurance, assets, child support, disability, housing subsidies, migration, Old-Age Survivors and Disability Insurance (OASDI), poverty, and participation in various government programs like Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF).

The SIPP sample is nationally representative, with an oversample of low-income areas, in order to increase the ability to measure participation in government programs.

The SIPP program provides critical information necessary to understand patterns and relationships in income and program participation. It will fulfill its objectives to keep respondent burden and costs low, maintain high data quality and timeliness, and use a refined and vetted instrument and processing system. The SIPP data collection instrument maintains the improved data collection experience for respondents and interviewers and focuses on improvements in data quality and better topic integration.

Starting in 2019, the Census Bureau and the Social Security Administration (SSA) entered into a joint agreement where both agencies support the SIPP program by contributing resources to add, process, review, and maintain additional content on marital history, parental mortality, retirement and pension, and disability. This joint agreement started in September 2019 and goes until September 30, 2023.

The SIPP instrument is currently written in Blaise and C#. It incorporates an Event History Calendar (EHC) design to help ensure that the SIPP will collect intra-year dynamics of income, program participation, and other activities with at least the same data quality as earlier panels. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change may often occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data.

Since the SIPP EHC collects information using this ''autobiographical'' manner for the prior year, due to the coronavirus pandemic, select questions were modified to include answer options related to the pandemic as well as adding new questions pertaining to the pandemic. For instance, we adjusted the question regarding being away from work part-time to include being possibly furloughed due to coronavirus pandemic business closures. We also added new questions to collect information on whether the respondent received any stimulus payments.

Affected Public: Individual or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 182.

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 0607–1000.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–18059 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2127]

Voluntary Relinquishment of the Grant of Authority; Foreign-Trade Zone (FTZ) 263; Auburn, Maine

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, on October 1, 2004, the Board issued a grant of authority to the

Lewiston-Auburn Economic Growth Council, authorizing the establishment of Foreign-Trade Zone 263 (Board Order 1354);

Whereas, the Lewiston-Auburn Economic Growth Council has made a request (FTZ Docket B–13–2022) to the Board for voluntary relinquishment of the grant of authority for FTZ 263, and;

Whereas, the Board, noting the concurrence of U.S. Customs and Border Protection, adopts the findings of the FTZ staff report and concludes that approval of the request is in the public interest;

Now, therefore, the Foreign-Trade Zones Board terminates the FTZ status of Foreign-Trade Zone No. 263, effective this date.

Dated: August 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairperson, Foreign-Trade Zones Board.

[FR Doc. 2022–18044 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–905]

Certain Steel Nails From India: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel nails (steel nails) from India.

DATES: Applicable August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen or Eric Hawkins, 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) 482–3251 or (202) 482–1988, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is April 1, 2020, through March 31, 2021.

Scope of the Investigation

The products covered by this investigation are steel nails from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On July 5, 2022, Commerce issued the Preliminary Scope Memorandum.[3] Commerce received no comments from interested parties on the Preliminary Scope Memorandum. Thus, Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination

Based on our review and analysis of the information received in lieu of on-site verification and comments received from parties, we made certain changes to the *Preliminary Determination*.[6] However, these changes did not alter the subsidy rates calculated in the *Preliminary Determination* for the mandatory respondents, or the rate for all other producers/exporters. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated countervailable subsidy rates for the individually investigated exporters and producers (*i.e.,* Astrotech Steels Pvt. Ltd. (Astrotech) and Geekay). Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, we also calculated an estimated all-others rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act states that ''the all-others rate shall be equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 {of the Act}.'' Therefore, Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates

[1] *See Certain Steel Nails from India: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 34654 (June 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letters, In Lieu of On-site Verification Questionnaire, dated June 2, 2022, and June 9, 2022, respectively; *see also* ''Astrotech's In Lieu of Verification Questionnaire Response,'' dated June 10, 2022; and Geekay's Letter, ''In Lieu of On-Site Verification Questionnaire Response,'' dated June 17, 2022 (Geekay's ILOV Response).

[6] For example, due to minor corrections, we modified Geekay Wires Limited's (Geekay) subsidy calculations; these corrections, however, did not change Geekay's final subsidy rate. *See* Geekay's ILOV Response at 1–2.

calculated for the examined respondents using each company's publicly ranged sales value for the merchandise under consideration.[7]

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Astrotech Steels Pvt. Ltd	2.93
Geekay Wires Limited	2.73
All Others	2.85

Disclosure

Commerce intends to disclose its calculations performed to interested parties in this final determination within five days of any public announcement, or if there is no public announcement, within five days of the publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after June 7, 2022, the date of publication of the *Preliminary Determination* in the **Federal Register.**

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of steel nails from India. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel nails from India. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the

[7] With two respondents under examination, Commerce normally calculates: (A) a weighted average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. *See* Memorandum, ''Preliminary Determination of Subsidy Rate for All Others,'' dated May 31, 2022.

United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to these investigations also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–18045 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–523–817]

Certain Steel Nails From the Sultanate of Oman: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel nails (steel nails) from the Sultanate of Oman (Oman).

DATES: Applicable August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The products covered by this investigation are steel nails from Oman. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On July 5, 2022, Commerce issued the Preliminary Scope Memorandum.[3] Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

[1] *See Certain Steel Nails from the Sultanate of Oman: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 34639 (June 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from the Sultanate of Oman,'' dated concurrently with this determination (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Oman and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Oman: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letters, ''Revised In Lieu of Verification Questionnaire for Oman Fasteners LLC in the Countervailing Duty Investigation of Certain Steel Nails from the Sultanate of Oman,'' dated June 17, 2022; and ''Revised In Lieu of Verification Questionnaire for the Government of the Sultanate of Oman in the Countervailing Duty Investigation of Certain Steel Nails from the Sultanate of Oman'' dated June 17, 2022.

Changes Since the Preliminary Determination

After evaluating the comments received from interested parties and analyzing the information received in lieu of on-site verification, we made no changes to the net countervailable subsidy rate calculated for Oman Fasteners LLC (Oman Fasteners) since the *Preliminary Determination.* For a discussion of these comments, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated countervailable subsidy rate for Oman Fasteners. Section 705(c)(5)(A)(i) of the Act states that, for all exporters and producers not individually investigated, we will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Commerce calculated an individual estimated countervailable subsidy rate for Oman Fasteners, the only individually examined producer/exporter in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the rate calculated for Oman Fasteners is the rate assigned to all other producers and exporters not individually examined in this investigation, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Oman Fasteners LLC	2.49
All Others	2.49

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because there are no changes to the calculations from the *Preliminary Determination,* no additional disclosure is necessary.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after June 7, 2022, the date of publication of the *Preliminary Determination* in the **Federal Register.**

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of steel nails from Oman. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports from Oman. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank

length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum

[FR Doc. 2022–18051 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–542–805]

Certain Steel Nails From Sri Lanka: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel nails (steel nails) from Sri Lanka.

DATES: Applicable August 22, 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) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The products covered by this investigation are steel nails from Sri Lanka. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On July 5, 2022, Commerce issued the Preliminary Scope Memorandum.[3] Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient,

[1] *See Certain Steel Nails from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 34645 (June 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from Sri Lanka,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Memorandum).

and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we did not make changes to the subsidy rate calculations for Trinity Steel Private Limited (Trinity Steel).

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a countervailable subsidy rate for the individually investigated exporter and producer (*i.e.,* Trinity Steel). Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, we also calculated an estimated all-others rate for all other exporters and producers not individually investigated. Section 705(c)(5)(A) of the Act states that Commerce shall determine an all-others rate for companies not individually examined. Section 705(c)(5)(A)(i) of the Act states that ''the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 {of the Act}.'' Commerce calculated an individual estimated countervailable subsidy rate for Trinity Steel that is not zero, *de minimis,* or based entirely on facts otherwise available. Accordingly, we have assigned Trinity Steel's subsidy rate to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Trinity Steel Private Limited	4.12
All Others	4.12

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because there are no changes to the calculations from the *Preliminary Determination,* no additional disclosure is necessary.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after June 7, 2022, the date of publication of the *Preliminary Determination* in the **Federal Register**.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of steel nails from Sri Lanka. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel nails from Sri Lanka. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letter, ''In Lieu of Verification Questionnaire,'' dated June 6, 2022; *see also* Trinity Steel's Letter, ''Trinity In Lieu of Verification Questionnaire Response,'' dated June 14, 2022.

not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum

[FR Doc. 2022–18050 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–847]

Certain Steel Nails From the Republic of Turkey: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel nails (steel nails) from the Republic of Turkey (Turkey).

DATES: Applicable August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Macey Mayes, 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) 482–0208 or (202) 482–4473, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The products covered by this investigation are steel nails from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On July 5, 2022, Commerce issued the Preliminary Scope Memorandum.[3] Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in

[1] *See Certain Steel Nails from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 34649 (June 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Memorandum).

the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination

Based on our review and analysis of the information received in lieu of on-site verification and comments received from parties, we made certain changes to the subsidy rate calculations for Sertel Vida Metal A.S. (Sertel) since the *Preliminary Determination.* As a result of these changes, Commerce also revised the all-others rate. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated countervailable subsidy rates for the individually investigated exporters and producers (*i.e.,* Aslanbas Civi Tel Ve Celik Hasir San A.S. and Sertel). Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, we also calculated an estimated all-others rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act states that ''the all-others rate shall be equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 {of the Act}.'' Therefore, Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly ranged sales value for the merchandise under consideration.[6]

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Aslanbas Civi Tel Ve Celik Hasir San A.S	3.88
Sertel Vida Metal A.S	1.52
All Others	1.86

Disclosure

Commerce intends to disclose its calculations performed to interested parties in this final determination within five days of any public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after June 7, 2022, the date of publication of the *Preliminary Determination* in the **Federal Register.**

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of steel nails from Turkey. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel nails from Turkey. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d)

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] See Commerce's Letters, ''Verification Questionnaire for Aslanbas Civi Tel Ve Celik Hasir San A.S.,'' dated June 9, 2022; and ''Verification Questionnaire for Sertel Vida Metals A.S.,'' dated June 9, 2022.

[6] With two respondents under examination, Commerce normally calculates: (A) a weighted average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. *See* Memorandum, ''Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from the Republic of Turkey: All-Others Rate Calculation Memorandum,'' dated concurrently with this determination.

and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum:

[FR Doc. 2022–18053 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–821–837]

Sodium Nitrite From the Russian Federation: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing the countervailing duty order on sodium nitrite from the Russian Federation (Russia).

DATES: Applicable August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa Porpotage, 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) 482–1413.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on June 28, 2022, Commerce published its affirmative final determination in the countervailing duty investigation of sodium nitrite from Russia.[1] On August 15, 2022, the ITC notified Commerce of its affirmative final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of subject merchandise from Russia.[2]

Scope of the Order

The product covered by this order is sodium nitrite from Russia. For a

[1] *See Sodium Nitrite from the Russian Federation: Final Affirmative Duty Determination,* 87 FR 38375 (June 28, 2022).

[2] *See* ITC'S Letter, ''Notification of ITC Final Determination,'' dated August 15, 2022.

complete description of the scope of the order, *see* the appendix to this notice.

Countervailing Duty Order

As noted above, on August 15, 2022, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of subsidized imports of sodium nitrite from Russia.[3] Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this countervailing duty order. Because the ITC determined that imports of sodium nitrite from Russia are materially injuring a U.S. industry, unliquidated entries of such merchandise from Russia, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

In accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of sodium nitrite from Russia. With the exception of entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final affirmative injury determination, as further described below, countervailing duties will be assessed on unliquidated entries of sodium nitrite from Russia entered, or withdrawn from warehouse, for consumption on or after April 15, 2022, the date of publication of the *Preliminary Determination*.[4]

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of sodium nitrite from Russia, effective the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the rates listed in the table below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Producer/exporter	Subsidy rate (percent)
UralChem, JSC *	386.24
All Others	386.24

* Rate based on adverse facts available.

Provisional Measures

Section 703(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on April 15, 2022. Therefore, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on August 12, 2022.

In accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of sodium nitrite from Russia entered, or withdrawn from warehouse, for consumption after August 12, 2022, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[5] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[6] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[7]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [8]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

[3] *Id.*

[4] *See Sodium Nitrite from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 22504 (April 15, 2022).

[5] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[6] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[7] *Id.*

[8] This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [9] Accordingly, as stated above, the petitioner and the Government of Russia should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of Russia will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of Russia are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the countervailing duty order with respect to sodium nitrite from Russia, pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

This countervailing order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of this order, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

[FR Doc. 2022–18054 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Final Rule,* 86 FR at 52335.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–845]

Certain Steel Nails From Thailand: Final Negative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are not being provided to producers and exporters of certain steel nails (steel nails) from Thailand.

DATES: Applicable August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Griffith or Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430 or (202) 482–1468, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2022, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The products covered by this investigation are steel nails from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

On July 5, 2022, Commerce issued the Preliminary Scope Memorandum.[3] Commerce received no comments from interested parties on the Preliminary Scope Memorandum. Thus, Commerce made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

[1] *See Certain Steel Nails from Thailand: Preliminary Negative Countervailing Duty Determination,* 87 FR 34651 (June 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Certain Steel Nails from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letters, ''Questionnaire in Lieu of Verification,'' dated June 14, 2022, June 15, 2022, and June 17, 2022, respectively; *see also* Come Best's Letter, ''Certain Steel Nails from Thailand; In Lieu of Verification Response,'' dated June 21, 2022;

Continued

Changes Since the Preliminary Determination

Based on our review and analysis of the information received in lieu of on-site verification and comments received from parties, we made a change to the subsidy rate calculations for Come Best Thailand Co. Ltd. (Come Best). We made no changes to the subsidy rate calculations for Jinhai Hardware Co., Ltd. (Jinhai). For a discussion of the issues, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Come Best Thailand Co., Ltd	0.05 (*de minimis*)
Jinhai Hardware Co. Ltd	0.10 (*de minimis*)

In the *Preliminary Determination,* consistent with section 703(d) of the Act, Commerce did not calculate an estimated weighted-average subsidy rate for all other producers/exporters because it did not make an affirmative preliminary determination. In the *Preliminary Determination,* the total net countervailable subsidy rates for both companies were *de minimis* and, therefore, we did not suspend liquidation. Because the rates for the two companies remain *de minimis,* we are not directing U.S. Customs and Border Protection to suspend liquidation of entries of steel nails from Thailand.

Disclosure

Commerce intends to disclose its calculations performed to interested parties in this final determination within five days of any public announcement, or if there is no public announcement, within five days of the publication of this notice in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission of our determination. As our final determination is negative, this proceeding is terminated.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: August 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS

and Jinhai's Letter, ''Certain Steel Nails from Thailand: Submission of Jinhai's Response to Questionnaire in Lieu of Verification,'' dated June 22, 2022.

subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum

[FR Doc. 2022–18052 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC234]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction of the New England Wind Offshore Wind Farm, Offshore Massachusetts

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

ACTION: Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a petition from Park City Wind LLC (Park City Wind), a wholly owned subsidiary of Avangrid Renewables, LLC, requesting authorization to take small numbers of marine mammals incidental to construction activities associated with the New England Wind Offshore Wind Farm in a designated lease area on the Outer Continental Shelf (OSC–A 0534) offshore Massachusetts over the course of 5 years beginning in 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Park City Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Park City Wind's application and request.

DATES: Comments and information must be received no later than September 21, 2022.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Daly@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of Park City Wind's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please email the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request for the implementation of regulations governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On December 1, 2021, NMFS received an application from Park City Wind requesting authorization to take, by Level A harassment and Level B harassment, 39 species of marine mammals incidental to construction and operation activities associated with the development of the New England Wind Offshore Wind Farm offshore of Massachusetts in Commercial Lease (OCS–A–0534). In response to our comments, and following extensive information exchange with NMFS, Park City Wind submitted a final, revised application on July 13, 2022, that we determined was adequate and complete on July 20, 2022. Park City Wind requested the regulations and subsequent LOA be valid for 5 years beginning in 2025.

Park City Wind is proposing to develop the New England Wind project in two Phases with a maximum of 130 wind turbine generators (WTGs) and electrical service platform (ESP) positions. Two positions may potentially have co-located ESPs (*i.e.,* two foundations installed at one grid position), resulting in 132 foundations.

Phase 1 would include 41 to 62 WTGs and one or two ESPs while Phase 2 would include 64 to 88 WTG/ESP positions (up to three of those positions will be occupied by ESPs). Four or five offshore export cables will transmit electricity generated by the WTGs to onshore transmission systems in the Town of Barnstable, Massachusetts.

New England Wind's offshore renewable wind energy facilities are located immediately southwest of Vineyard Wind 1, which is located in Lease Area OCS–A 0501. New England Wind will occupy all of Lease Area OCS–A 0534 and potentially a portion of Lease Area OCS–A 0501 in the event that Vineyard Wind 1 does not develop ''spare'' or extra positions included in Lease Area OCS–A 0501 and Vineyard Wind 1 assigns those positions to Lease Area OCS–A 0534. For the purposes of the LOA, the Southern Wind Development Area (SWDA) is defined as all of Lease Area OCS–A 0534 and the southwest portion of Lease Area OCS–A 0501.

Park City Wind considered the following activities associated with wind farm construction and operation in its application: installation of WTG and ESP foundations using impact and vibratory pile driving and drilling; high-order detonation of unexploded ordnances (UXOs); high-resolution geophysical (HRG) site characterization surveys; fisheries monitoring surveys; and export cable and inter-array cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials within the Project area to support construction and operation. Park City Wind has determined that a subset of these activities (*i.e.,* WTG and ESP foundation installation, HRG surveys, and UXO detonation) may result in the taking, by Level A harassment and Level B harassment, of marine mammals. Therefore, Park City Wind requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Park City Wind was awarded Commercial Lease OCS–A 0534 offshore of Massachusetts and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Park City Wind has submitted a COP to the Bureau of Ocean Energy Management (BOEM) proposing the construction, operation, maintenance, and conceptual decommissioning of the New England Wind project within Lease Area OCS–A 0487 and consisting of up to 130 WTGs, 2 ESPs,

Park City Wind has provided a complete description of the specified activities and their proposed mitigation, monitoring and reporting measures in their application. They have also included a description of estimated take methods and results. Park City Wind anticipates the following activities may potentially result in harassment of marine mammals:

- installing up to 130 WTG foundations comprised of either monopile or jacket foundations. Monopiles would not exceed 12-meters (m) in diameter for Phase 1 and 13-m for Phase 2 and would be installed using a 5,000 kilojoule (kJ) or 6,000 kJ impact hammer while each jacket foundation would consist of four 4-m pin piles installed with a 3500 kJ hammer. A vibratory hammer and drill may also be used to install the piles, as necessary. All pile driving and drilling would occur from May through December over the course of 2–3 years;
- installing up to five ESP jacket foundations (four 4-m pin piles) by impact and/or vibratory pile driving and potentially drilling from May through December over the course of 2–3 years; and
- using HRG equipment to survey approximately 10,000 kilometers (km) over 5 years (80 km/day × 25 days/year × 5 years); and
- the potential high-order detonation of up to 10 UXOs over the course of 10 days (1 UXO detonation per day, as necessary).

Park City Wind has provided two construction schedules (Construction Schedule A and B) but has requested take assuming that all foundations would be jacket foundations. A final decision on foundation types (and hence construction schedule) will be identified during the environmental review permitting process. Park City Wind has also indicated that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the course of the Project due to weather, mechanical, or other related delays.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Park City Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Park City Wind, if appropriate.

Dated: August 17, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC221]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sand Island Pile Dikes Repairs in the Columbia River

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

ACTION: Notice; issuance of an incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive IHAs to the U.S. Army Corps of Engineers (Corps) to incidentally harass marine mammals during in-water construction activities associated with the Sand Island Pile Dikes Repairs Project in the Columbia River. There are no changes from the proposed authorizations in these final authorizations.

DATES: These authorizations are effective from August 1, 2023 through July 31, 2024 and August 1, 2024 through July 31, 2025.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, 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 IHA 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 March 4, 2022, NMFS received a request from the Corps for two IHAs to take marine mammals incidental to the Sand Island Pile Dikes Repairs Project in the Columbia River over the course of two years. The application was deemed adequate and complete on June 9, 2022. The Corps' request is for take of seven species of marine mammals by Level B harassment and, for a subset of these species (harbor seal (*Phoca vitulina*) and harbor porpoise (*Phocoena phocoena*)), Level A harassment. Neither the Corps nor NMFS expect serious injury or mortality to result from these activities and, therefore, IHAs are appropriate.

There are no changes from the proposed IHA to the final IHA.

Description of Proposed Activity

Overview

The Sand Island pile dikes are part of the Columbia River pile dike system and are comprised of four pile dikes, which are named according to river mile (RM) location, at RMs 4.01, 4.47, 5.15, and 6.37. The purpose of the Sand Island Pile Dikes Repairs project is to perform needed repairs. The existing timber pile dikes at Sand Island consist of three rows of vertical timber pilings between 12 and 20 inches (in) in diameter with two rows of horizontal spreaders, which provide structural stability of the vertical timber pilings. A cluster of piles with one or more taller piles, called an outer dolphin with king piles, is used to anchor and mark the end for navigational safety. There is rock apron at the base of the vertical piles and at the shore connection to protect against scour. The existing pile dikes have deteriorated greatly due to lack of maintenance.

The major project elements planned to be conducted under these IHAs include work at pile dikes 6.37 and 5.15. The Corps plans to remove existing timber piles, drive new steel pipe piles and place rock for multiple purposes including scour protection at the base of the new piles, enhanced enrockment segments, shore connections, and revetment along the western portion of the shoreline at East Sand Island. In addition, the Corps plans to construct a temporary material off-loading facility (MOF) to support the planned construction work. All piles installed to construct the MOF will be subsequently removed in the same year.

TABLE 1—YEAR 1 PROPOSED PILE DRIVING

Project element	Pile size and type	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Estimated days of work	Estimated month of work
Pile dike 6.37	24-in steel pipe	Vibratory install	171[a]	14[b]	15 minutes	56	August–September.
Pile dike 6.37	24-in steel pipe	Impact install		225 strikes.			
MOF	24-in steel pipe	Vibratory install	Up to 24[c]	5	30 minutes	5	October.
MOF	24-in steel pipe	Vibratory removal		20	5 minutes	1	October.
MOF	24-in steel sheet	Vibratory install	Up to 100[c]	25	10 minutes	4	October.
MOF	24-in steel sheet	Vibratory removal		50	3 minutes	1	October.
Total days of work.						67	

[a] A total of 244 steel pipe piles will be installed at PD 6.37 over the two years, with approximately 70 percent installed in year 1 and the remaining 30 percent installed in year 2. These same 171 piles will be installed using both vibratory and impact hammers.
[b] The Corps estimates an average of 5 piles will be installed per day but could be up to 14 per day.
[c] The same MOF piles will be installed and subsequently removed.

TABLE 2—YEAR 2 PROPOSED PILE DRIVING

Project element	Pile size and type	Method	Number of piles	Maximum piles per day	Duration or strikes per pile	Estimated days of work	Estimated month of work
Pile dike 6.37	24-in steel pipe	Vibratory install	73[a]	14[b]	15 min	24	August.
	Impact install			225 strikes.			
Pile dike 5.15	24-in steel pipe	Vibratory install	150	14	15 min	71	August–November.
	Impact install			225 strikes.			
Total days of work.						95	

[a] These same 73 piles will be installed using both vibratory and impact hammers.
[b] The Corps estimates an average of 5 piles will be installed per day but could be up to 14 per day.

A detailed description of the planned activities is provided in the **Federal Register** notice of the proposed IHAs (87 FR 39481; July 1, 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 descriptions of the specific activities. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting sections).

Comments and Responses

A notice of NMFS' proposal to issue the IHAs to the Corps was published in the **Federal Register** on July 1, 2022 (87 FR 39481). That notice described, in detail, the Corps' activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period. 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 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity, 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 expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks 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' U.S. Pacific and Alaska SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.,* 2021; Muto *et al.,* 2022) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—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 Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington.	E, D, Y	4,973 (0.05, 4,776, 2018)	28.7	≥ 48.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:.						
Killer Whale	*Orcinus orca*	West Coast Transient	-, -, N	349 [4] (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	-, -, N	21,487 (0.44, 15,123, 2011)	151	≥3.0
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
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	43,201 [5] (see SAR, 43,201, 2017)	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coast	-, -, N	24,732 [6] (UNK, UNK, 1999)	UND	10.6
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7

[1] 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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[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 mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Based on counts of individual animals identified from photo-identification catalogues. Surveys for abundance estimates of these stocks are conducted infrequently.

[5] Best estimate of pup and non-pup counts, which have not been corrected to account for animals at sea during abundance surveys.
[6] The abundance estimate for this stock is greater than eight years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

As indicated above, all seven species (with seven managed stocks) in Table 3 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 project area are included in Table 4 of the IHA application. While gray whales (*Eschrichtius robustus*) and killer whales from the Southern Resident Distinct Population Segment (DPS) and stock have been reported near the mouth of the Columbia River, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Gray whales have not been documented near the proposed project area although anecdotal evidence indicates they have been seen at the mouth of the Columbia River. However, they are not a common visitor as they mostly remain in the vicinity of the offshore shelf-break (Griffith 2015). They migrate along the Oregon coast in three discernible phases from early December through May (Herzing and Mate 1984). Therefore, they are unlikely to occur near the project area between August and November. Monitoring reports from recent IHAs issued to the Corps for similar construction work on the Columbia River Jetty System (*e.g.,* 82 FR 15046; March 23, 2017) reported no observations of gray whales. Given the size of gray whales, they could be readily identifiable at a considerable distance. If a gray whale were to approach the established Level B harassment isopleths, shutdown would be initiated to avoid take. The Corps would employ at least one vessel-based protected species observer (PSO) who would be able to adequately monitor these zones. Therefore, NMFS does expect take of gray whales to occur and no take is anticipated or authorized.

Historically, killer whales were regular visitors in the vicinity of the estuary. However, they are much less common presently and are rarely seen in the interior of the Columbia River Jetty system (Wilson 2015). Southern Resident killer whales have been documented near the mouth of the Columbia River but these observations have most commonly been during the late-winter to early-spring months (NMFS 2021), outside of the proposed construction window for these projects. Monitoring reports from recent IHAs issued to the Corps for similar construction work on the Columbia River Jetty System (*e.g.,* 82 FR 15046; March 23, 2017) reported no observations of killer whales. While it is possible that killer whales from the West Coast Transient stock may enter the project area (see Estimated Take section), it is unlikely that take of Southern Resident killer whales would occur, and no take is anticipated or authorized.

A detailed description of the species likely to be affected by the Corps' Sand Island Pile Dikes Repairs Project, 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 39481; July 1, 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.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the City's construction activities have the potential to result in Level A and Level B harassment of marine mammals in the vicinity of the project area. The notice of proposed IHAs (87 FR 39481; July 1, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the City's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into the final determinations for the IHAs and is not repeated here; please refer to the notice of proposed IHAs (87 FR 39481; July 1, 2022).

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform 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 primarily by Level B harassment (in the form of behavioral disturbance and temporary threshold shift (TTS)), as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and removal) have the potential to result in disruption of behavioral patterns and cause a temporary loss in hearing sensitivity for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for porpoises and harbor seals because predicted auditory injury zones are larger. The required mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized 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 proposed 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 permanent threshold shift (PTS) of some degree (equated to Level A harassment).

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.

The Corps' planned activities include the use of continuous (vibratory hammer) and impulsive (impact hammer) sources, and therefore the 120 and 160 dB re 1 μPa (RMS) thresholds are 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). The Corps' activities include the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

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 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $\leq L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic 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 should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. 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 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 acoustic 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.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes, and methods the Corps plans to use (Table 6).

TABLE 6—SOURCE LEVELS

Pile type and method	Source Level (dB re 1 µPa)			Reference
	Peak	RMS	SEL	
24-in steel pipe impact installation	203 dB	190 dB	177 dB	CalTrans (2015).
24-in steel pipe pile vibratory installation/removal	Not available	161 dB	Not available	U.S. Navy (2015).
24-in steel sheet pile vibratory installation/removal	175 dB	160 dB	160 dB	CalTrans (2015).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2),

Where:

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Corps' planned activities in the absence of specific modelling. The Level B harassment zones for the Corps' planned activities are shown in Table 7.

Level A Harassment Zones

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 pile installation or 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 would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Tables 1 and 2, and the resulting isopleths are reported below in Table 7. Due to the bathymetry and geography of the project areas, sound may not reach the full distance of the harassment isopleths in all directions.

TABLE 7—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES

Pile type and method	Level A harassment zone (m)					Level B harassment zone (m)
	LF cetacean	MF cetacean	HF cetacean	Phocid pinniped	Otariid pinniped	
24-in Steel Pile Impact Installation	430.0	15.3	512.2	230.1	16.8	1,000
24-in Steel Pile Vibratory Installation	7.9	0.7	11.7	4.8	0.3	5,412
Steel Sheet Pile Vibratory Installation	36.8	3.3	54.4	22.4	1.6	4,642
Steel Sheet Pile Vibratory Removal	9.6	0.9	14.2	5.8	0.4	4,642

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that informs the authorized take incidental to the Corps' pile driving activities. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. Unless otherwise specified, the occurrence information described below is used to estimate take for both the Year 1 and Year 2 IHAs. NMFS has carefully reviewed the Corps' analysis and concludes that it represents an appropriate and accurate method for estimating incidental take caused by the Corps' activities.

Steller Sea Lion, California Sea Lion, and Harbor Seal

For Steller sea lions, California sea lions, and harbor seals, the numbers of individuals were referenced from the Washington Department of Fish and Wildlife's (WDFW's) surveys from 2000–2014 at the South Jetty for the months of in water work (August through October) and averaged to get an estimated daily count (Table 8). While animals were surveyed at the prominent haul out site along the South Jetty, since the Sand Island pile dikes are very close to the mouth of the river and the South Jetty, the Corps assumed each of these estimates represent the total number of individuals present in the project vicinity. In instances where planned activities will occur over a span of two or more months, the Corps derived potential take estimates from the average abundance recorded over the specified period. For harbor seals, where abundance was only estimated in July, the Corps used that estimate for all projections.

TABLE 8—PINNIPED COUNTS FROM THE SOUTH JETTY FROM 2000–2014

[WDFW 2014]

	Steller sea lion	California sea lion	Harbor seal
August	324	115	57
Average August–September	267	182	57
September	209	249	57
October	384	508	57
Average (all months)	306	291	57

To calculate the total estimated takes by Level B harassment, the Corps multiplied the estimated days of activity within each month (or total across months) by the associated monthly (or average across months) count of each species (Table 9).

TABLE 9—ESTIMATED TAKE OF STELLER SEA LIONS, CALIFORNIA SEA LIONS, AND HARBOR SEALS BY LEVEL B HARASSMENT

Project element	Month(s)	Days of pile driving in month(s)	Steller sea lion average count	Steller sea lion calculated take	California sea lion average count	California sea lion calculate take	Harbor seal average count	Harbor seal calculated take
Year 1								
Pile Dike 6.37	August–September	56	267	14,952	182	10,192	57	3,192
MOF	October	11	384	4,224	508	5,588	57	627
Total takes by Level B harassment:				19,176	Total:	15,780	Total:	3,819
Year 2								
Pile Dike 6.37	August	24	324	7,776	115	2,760	57	1,368
Pile Dike 5.15	August through October.	71	306	21,726	291	20,661	57	4,047
Total takes by Level B harassment:				29,502	Total:	23,421	Total:	5,415

Based on the relative proportion of the area expected to be ensonified above the Level A harassment threshold for phocid pinnipeds from impact pile driving of 24-in steel pipe piles (approximately 0.23 square kilometers (km^2)) to the area ensonified above the Level B harassment threshold (up to 94 km^2 for vibratory installation of 24-in steel pipe piles), the Corps estimated that of the total number of harbor seals that may be located within the greater Level B harassment zone, no more than 1 percent would approach the pile driving activities closer and enter the smaller Level A harassment zone (231 m). Thus, the Corps assumes that one percent of the total estimated takes of

harbor seals (3,819 individuals in Year 1 and 5,415 individuals in Year 2; see Table 9) would be by Level A harassment. Therefore, the Corps has requested, and NMFS has authorized, 38 takes of harbor seals by Level A harassment and 3,781 takes by Level B harassment in Year 1 and 54 takes of harbor seals by Level A harassment and 5,361 takes by Level B harassment in Year 2 (Table 10).

The largest Level A harassment zone for otariid pinnipeds is 16.8 m. The Corps is required to enforce a minimum shutdown zone of 25 m for these species. At that close range, the Corps will be able to detect California sea lions and Steller sea lions and implement the required shutdown measures before any sea lions could enter the Level A harassment zone. Therefore, no takes of California sea lions or Steller sea lions by Level A harassment are requested or authorized.

Humpback Whale

Humpback whales have been observed in the immediate vicinity of the project area in recent years. Humpbacks have been arriving in the lower Columbia estuary as early as mid-June and have been observed as late as mid-November with a peak of abundance coinciding with the peak abundance of forage fish in mid-summer. No surveys were located for the project area, but it is assumed that they could be present during pile driving activities. Given the higher observed abundances in summer, the Corps assumes up to two individuals per month could enter the Level B harassment zone during pile driving activities each year, for a total of 6 takes of humpback whales by Level B harassment in each year (Table 10).

The largest Level A harassment zone for low-frequency cetaceans for any pile type or method is 430 m. During impact pile driving, the Corps is required to implement a shutdown zone equivalent to the Level A harassment zone for low-frequency cetaceans. Given the visibility of humpback whales, the Corps will be able to detect humpback whales and shut down pile driving before any humpbacks could enter the Level A harassment zone. Therefore, no take of humpback whales by Level A harassment is requested or authorized.

Transient Killer Whale

Killer whales were not detected in fall and winter aerial surveys off the Oregon coast documented in Adams *et al.* (2014). Aerial seabird marine mammal surveys observed zero killer whales in January 2011, zero in February 2012, and 10 in September 2012 within an approximately 1,500 km^2 range near the MCR (Adams 2014). While a rare occurrence, a pod of transient killer whales were detected near the Astoria Bridge in May of 2018 (Frankowicz 2018). There have been no confirmed sightings of southern resident killer whales entering the project area. The Corps estimates that no more than two transient killer whales per year could be near the mouth of the Columbia River during proposed work and taken by Level B harassment (Table 10).

The largest Level A harassment zone for mid-frequency cetaceans for any pile type or method is 15.3 m. The Corps is required to implement a minimum 25 m shutdown zone for mid-frequency cetaceans. Given the visibility of killer whales, at that close range, the Corps will be able to detect transient killer whales and shut down pile driving before any killer whales could enter the Level A harassment zone. Therefore, no take of transient killer whales by Level A harassment is requested or authorized.

Harbor Porpoise

Harbor porpoises are regularly observed in the oceanward waters adjacent to the project area and are known to occur year-round. Their nearshore abundance peaks with anchovy presence, which is generally June through October. There was one recorded sighting of a harbor porpoise in the project area east of the jetties in the Sept-Nov timeframe (OBIS–SEAMAP 2019). Therefore, it is feasible that animals could be present during pile driving activities. During monitoring for pile driving at the Columbia River Jetty System, over the course of a 5-day monitoring period, observers detected five harbor porpoises (Grette Associates 2016). Given the potential for harbor porpoise to travel in pairs, the Corps estimates that one pair of harbor porpoises per day may enter the Level B harassment zone per day of pile driving (67 days in Year 1 and 95 days in Year 2) for a total of 134 harbor porpoises taken in Year 1 and 190 taken in Year 2.

For impact installation of 24-in steel pipe piles, the Level A harassment zone for high-frequency cetaceans is 512 m. Although the Corps is required to implement a shutdown zone of 515 m during this activity (see Mitigation), due to the cryptic nature and lower detectability of harbor porpoises at large distances, the Corps anticipates that up to 16 of the harbor porpoises (2 per week over the course of 8 weeks of impact pile driving) that enter the Level B zone in Year 1 could approach the project site closer and potentially enter the Level A harassment zone undetected during impact installation. Similarly, the Corps estimates that up to 27 of the harbor porpoises that enter the Level B harassment zone in Year 2 (2 per week over the course of 13.5 weeks of impact pile driving) could approach the project site closer and potentially enter the Level A harassment zone undetected during impact installation. These takes by Level A harassment could occur as one group in one day or single animals over multiple days. In total, the Corps has requested, and NMFS has authorized, take of 134 harbor porpoises in Year 1 (118 takes by Level B harassment and 16 takes by Level A harassment) and 190 harbor porpoises in Year 2 (163 takes by Level B harassment and 27 takes by Level A harassment) (Table 10).

Northern Elephant Seal

Northern elephant seals have been observed near the mouth of the Columbia River, but there are no known haulout locations for northern elephant seals in the project vicinity. Given the rarity of sightings in and around the Columbia River, the Corps estimates that no more than two northern elephant seals per month may enter the project area and be taken by Level B harassment each year, for a total of six takes by Level B harassment in Year 1 and six takes by Level B harassment in Year 2 (Table 10).

The largest Level A harassment zone (230 m) occurs during impact installation of 24-in steel pipe piles. It is unlikely that northern elephant seals would be found within this zone, and even more unlikely that northern elephant seals would be found within the Level A harassment zones for vibratory pile driving of any pile size (less than 23 m for all pile types). However, even if northern elephant seals were encountered in the project areas, at that close range, the Corps will be able to detect them and implement the required shutdown measures before any northern elephant seals could enter the Level A harassment zones. Therefore, no take of northern elephant seals by Level A harassment is requested or authorized.

TABLE 10—AUTHORIZED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY YEAR, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Authorized take by Level A harassment	Authorized take by Level B harassment	Total proposed take	Stock	Stock abundance	Percent of stock
Year 1:						
Humpback whale	0	6	6	California/Oregon/Washington	2,900	0.21
Killer whale	0	2	2	West Coast Transient	349	0.57
Harbor porpoise	16	118	134	Northern Oregon/Washington Coast	21,487	0.60
California sea lion	0	15,780	15,780	U.S.	257,606	6.13
Steller sea lion	0	19,176	19,176	Eastern	52,932	36.23
Harbor seal	38	3,781	3,819	Oregon/Washington Coast	24,732	15.44
Northern elephant seal	0	6	6	California Breeding	179,000	0.003
Year 2:						
Humpback whale	0	6	6	California/Oregon/Washington	2,900	0.21
Killer whale	0	2	2	West Coast Transient	349	0.57
Harbor porpoise	27	163	190	Northern Oregon/Washington Coast	21,487	0.88
California sea lion	0	23,421	23,421	U.S.	257,606	9.09
Steller sea lion	0	29,502	29,502	Eastern	52,932	55.74
Harbor seal	54	5,361	5,415	Oregon/Washington Coast	24,732	21.89
Northern elephant seal	0	6	6	California Breeding	179,000	0.003

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.

Time Restrictions

The Corps has provided in its description of the project that pile driving will occur only during daylight hours (no sooner than 30 minutes after sunrise through no later than 30 minutes before sunset), when visual monitoring of marine mammals can be conducted. In addition, to minimize impacts to ESA-listed fish species, all in-water construction will be limited to the months of August through November.

Shutdown Zones

Before the commencement of in-water construction activities, the Corps must establish shutdown zones for all activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Pile driving must also not commence until all marine mammals are clear of their respective shutdown zones. Shutdown zones are meant to encompass the Level A harassment zones and therefore would vary based on the activity type and marine mammal hearing group (Table 11). At minimum, the shutdown zone for all hearing groups and all activities is 25 m. For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 25 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include, for example, the movement of the barge to the pile location or positioning of the pile on the substrate via a crane.

The Corps must also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity (see Table 11).

TABLE 11— SHUTDOWN ZONES

Pile type and method	Shutdown zones by hearing group (m)					Shutdown zones for unauthorized species (m)
	LF cetacean	MF cetacean	HF cetacean	Phocid pinniped	Otariid pinniped	
24-in Steel pipe Pile Impact Installation	430	25	515	[a] 50	25	1,000
24-in Steel pipe pile Vibratory Installation	25	25	25	25	25	5,412
24-in Steel Sheet Pile Vibratory Installation [b]	40	25	55	25	25	4,642
24-in Steel Sheet Pile Vibratory Removal [b]	25	25	25	25	25	4,642

[a] 50 m is for harbor seals, shutdown zone for northern elephant seals is 235 m.
[b] Vibratory installation and removal of 24-in steel sheet piles only applicable in Year 1. No sheet piles will be installed or removed in Year 2.

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Monitoring and Reporting section) must ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A and Level B Harassment

PSOs must monitor the Level B harassment zones to the extent practicable, and all of the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs must observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone is considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 11, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity must not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones must commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors are required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required 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.

Visual Monitoring

Marine mammal monitoring during pile driving activities must be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer is required to have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Corps must have at least two PSOs stationed in the project area to monitor during all pile driving activities. One PSO must be positioned at the work site on the construction barge to observe Level A harassment and shutdown zones. At least one PSO must monitor from a boat to ensure full visual coverage of the Level B harassment zone(s) and alert construction crews of marine mammals entering the Level B harassment zone and/or approaching the Level A harassment zones. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored.

Monitoring must be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report must include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• 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 driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);

• PSO locations during marine mammal 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.

For each observation of a marine mammal, the following 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 the pile being driven or hole being drilled for each sighting;

• Estimated number of animals (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);

• Number of marine mammals detected within the harassment zones, by species; and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS' comments must be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Corps must report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region (WCR) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Corps must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The Corps must not resume their activities until notified by NMFS.

The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

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 species listed in Table 10, 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. We note, though, that there are far fewer estimated takes of cetaceans than pinnipeds, and some additional pinniped-specific analysis is included.

Pile driving activities associated with the Sand Island Pile Dikes Repairs Project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the required mitigation measures (see Mitigation section).

In both years, take by Level A harassment is authorized for two species (harbor seals and harbor porpoise) to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur PTS before being observed and the Corps shutting down pile driving activity. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Additionally, the amount of authorized take by Level A harassment is very low for all marine mammal stocks and species. For both IHAs, for 5 of 7 affected stocks, NMFS anticipates and proposes to authorize no Level A harassment take over the duration of the Corps' planned activities; for the other 2 stocks, NMFS authorizes no more than 54 takes by Level A harassment in any year. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. These takes of individuals by Level A harassment (*i.e.,* a small degree of PTS) are not expected to accrue in a manner that would affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

As described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. The Corps must also shut down pile driving activities if marine mammals approach within hearing group-specific zones that encompass the Level A harassment zones (see Table 11) further minimizing the likelihood and degree of PTS that would be incurred. Even absent mitigation, no serious injury or mortality from construction activities is anticipated or authorized.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, including the Sand Island Pile Dike System Test Piles Project conducted by the Corps in preparation for the proposed Sand Island Pile Dikes Repairs Project (84 FR 61026; November 12, 2019), would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring, particularly as the project is located on a busy waterway at the mouth of the Columbia River with high amounts of vessel traffic. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. The shores along the Columbia River are occasionally used by harbor seals for pupping, but the Corps' proposed activities will occur outside of the harbor seal pupping season. There are no known important areas for other marine mammals, such as feeding or pupping areas.

For all species and stocks, and in both years, take would occur within a limited, relatively confined area (the mouth of the Columbia River) of the stock's range. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals within the lower Columbia River and immediately outside the river along the Oregon and Washington coasts. Level A harassment and Level B harassment would be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein.

Some individual marine mammals in the project areas may be present and be subject to repeated exposure to sound from pile driving on multiple days. However, pile driving is not expected to

occur on every day of the in-water work window, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between workdays. As discussed above, there is similar foraging and haulout habitat available for marine mammals within and outside of the Columbia River along the Washington and Oregon coasts, outside of the project area, where individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

In summary and as described above, the following factors primarily support our 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 mortality or serious injury is anticipated or authorized for either year;
- In both years, Level A harassment is not anticipated or authorized for five of the seven species. For the other two species (one high-frequency cetacean and one phocid pinniped), the amount of Level A harassment is low and would be in the form of a slight degree of PTS in limited low frequency ranges (< 2 kHz) which are not the most sensitive primary hearing ranges for these species and would not interfere with conspecific communication or echolocation;
- For both years, Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, and some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Nearby areas of similar habitat value (*e.g.,* foraging and haulout habitats) within and outside the lower Columbia River are available for marine mammals that may temporarily vacate the project areas during construction activities for both projects;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations from either project;
- The ensonified areas in both years are very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat from either project;
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks for both projects;
- The enhanced mitigation measures (*e.g.,* shutdown zones equivalent to the Level B harassment zones) to eliminate the potential for any take of unauthorized species; and
- Monitoring reports from similar work in the lower Columbia River, including previous work at the Sand Island Pile Dikes, that have documented little to no behavioral effect on individuals of the same species that could be impacted by the specified activities from both projects, suggesting the degree/intensity of behavioral harassment would be minimal.

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 proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activities in Year 1 will have a negligible impact on all affected marine mammal species or stocks. NMFS also finds that the total marine mammal take from the planned activities in Year 2 will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, 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.

For all species other than Steller sea lions, the authorized take in each year is below one third of the population for all marine mammal stocks (Table 10). In Year 1 and Year 2, the authorized take of Steller sea lions, as a proportion of the stock abundance is 36.23 percent and 55.74 percent, respectively, if all takes are assumed to occur for unique individuals. In reality, it is unlikely that all takes would occur to different individuals. The project area represents a small portion of the stock's overall range (from Alaska to California (Muto *et al.,* 2019)) and based on observations at other Steller sea lion haulouts, it is reasonable to expect individual animals to be present at the haulout and in the water nearby on multiple days during the activities. Therefore, it is more likely that there will be multiple takes of a smaller number of individuals within the project area, such that the number of individuals taken would be less than one third of the population.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would 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 would 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 review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified

any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHAs 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, in this case with the West Coast Regional Office.

NMFS is authorizing incidental take of humpback whales from the Mexico and Central America DPSs, which are listed under the ESA. The effects of this Federal action were adequately analyzed in the NMFS West Coast Region's Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Sand Island Pile Dike Repair Project, dated June 14, 2022, which concluded that the take NMFS authorizes through this IHA is not likely to adversely affect humpback whales from the Mexico and Central America DPSs or their designated critical habitat and would not jeopardize the continued existence of any endangered or threatened species.

Authorization

As a result of these determinations, NMFS has issued two consecutive IHAs to the Corps for conducting the Sand Island Pile Dikes Repairs Project in the lower Columbia River, beginning in August 2023, with the previously mentioned mitigation, monitoring, and reporting requirements incorporated.

Dated: August 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC138]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Attentive Energy, LLC (Attentive Energy) to incidentally harass marine mammals during marine site characterization surveys associated with high resolution geophysical (HRG) equipment off the coast of New Jersey and New York in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS–A 0538. There are no changes from the proposed authorization in this final authorization.

DATES: This authorization is effective from September 15, 2022 through September 14, 2023.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, 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/action/incidental-take-authorization-attentive-energy-llc-marine-site-characterization-surveys-new.* 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 April 11, 2022, NMFS received a request from Attentive Energy for an IHA to take marine mammals incidental to conducting marine site characterization surveys off the coast of New Jersey and New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS)–A 0538. The application was deemed adequate and complete on May 23, 2022. On June 17 2022, NMFS published a proposed IHA for public comment (87 FR 38094). Attentive Energy's request is for take of 15 species of marine mammals by Level B harassment only. Neither Attentive Energy nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable

requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Description of Activity

Overview

Attentive Energy plans to conduct marine site characterization surveys using high-resolution geophysical (HRG) acoustic sources in the Lease Area OCS–A 0538.

The purpose of the survey is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. One survey vessel will operate as part of the planned surveys. Underwater sound resulting from Attentive Energy's site characterization survey activities, specifically HRG survey effort, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The estimated duration of the surveys is expected to be up to 42 to 56 total survey days (6 to 8 weeks) within a single year in the Lease Area. A survey day is defined as a 24-hour survey period where 200 kilometer of track line is surveyed. This schedule is based on 24-hours of operations for up to 8-weeks. In total there are 3,028 km of track line that would be surveyed within the Lease Area. The schedule presented here for this project has accounted for potential down time due to inclement weather or other project-related delays, therefor actual survey time will be less than 8 weeks. Planned activities would occur between September 15, 2022 and September 14, 2023.

Specific Geographic Region

Attentive Energy's planned activities would occur in the Northwest Atlantic Ocean within Federal and state waters (Figure 1). Surveys would occur in the Lease Area off the coast of New York and New Jersey in the New York bight. Planned activities would occur within the Commercial Lease of Submerged Lands for Renewable Energy Development in OCS–A 0538. The OCS Lease area is approximately 577.6 km^2 and is located between 30 and 60 meters water depth.

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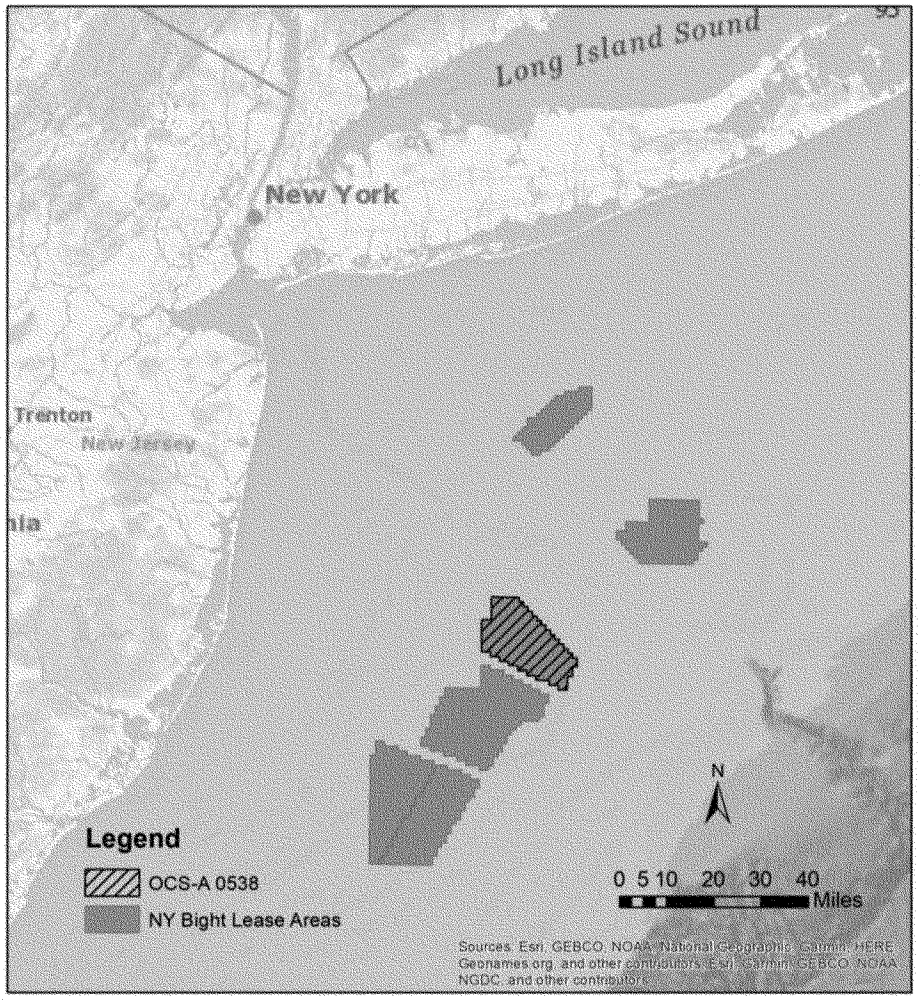

Figure 1. New York Bight Offshore Wind Lease Areas. Attentive Energy survey area is highlights with black hatching.

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Detailed Description of Specific Activity

Attentive Energy's marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would occur within the Lease Area off the coasts of New York and New Jersey in the New York Bight. The planed HRG and geotechnical survey activities are described below.

Geotechnical Survey Activities

Attentive Energy's geotechnical survey activities would include the drilling of sample boreholes, deep cone penetration tests, and shallow cone penetration tests. The geotechnical survey activity is not expected to result in take of marine mammals. Similar activities were performed before in a nearby lease area by Atlantic Shores, and considerations of the impacts produced from geotechnical activities have been previously analyzed and included in the proposed 2020 **Federal Register** notice for Atlantic Shores' HRG activities (85 FR 7926; February 12, 2020). In that notification, NMFS determined that the likelihood of the geotechnical surveys resulting in harassment of marine mammals was to be so low as to be discountable. As this information remains applicable and NMFS' determination has not changed, these activities will not be discussed further in this notification.

Geophysical Survey Activities

Attentive Energy has planned that HRG survey operations would be conducted continuously 24 hours a day. Based on 24-hour operations, the estimated total duration of the activities would be approximately 8 weeks. As previously discussed above, this schedule does include potential down time due to inclement weather or other project-related delays. The HRG survey will be conducted with primary track lines spaced at 150-meter (m) intervals and tie-lines spaced at 500 − m intervals.

The HRG survey activities will be supported by the use of a purpose-built survey vessel. These are designed with built-in A-frames and davits, permanently mounted winches, and other items on the deck specifically for survey operations. The geophysical survey activities planned by Attentive Energy would include the following:

- Depth sounding to determine water depth, site bathymetry, and general bottom topography (multibeam echosounder);
- Magnetic intensity measurements (gradiometer) for detecting local

variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;

- Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and human-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow-bottom penetration sub-bottom profiler (SBP) to map the near surface stratigraphy (top 0 to 10 m [33 feet] below seabed in sand and 0 to 15 m [49 feet] in mixed sediments); and
- Medium penetration SBP (sparker) to map deeper subsurface stratigraphy as needed (soils down to at least 100 m [328 ft] below seabed in sand and at least 125 m [410 feet] below seabed in mixed sediments).

The representative survey equipment that may be used in support of planned geophysical survey activities can be found in Table 0–3 of Attentive Energy's Application. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives. All HRG survey equipment is listed in the application, including equipment that NMFS doesn't expect to result in take due to their higher frequencies and extremely narrow beam widths. Because of this, these sources were not considered when calculating the Level B harassment isopleths and are not discussed further in this notice. Acoustic parameters on this equipment can be found in Attentive Energy's IHA application on NMFS' website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*). We will only be discussing further the equipment listed below in Table 1. For equipment source level specifications noted in Table 1, a proxy representing the closest match in composition and operation of the Dual Geo-Spark was used from Crocker and Fratantonio (2016).

TABLE 1—ACOUSTIC EQUIPMENT FOR HRG SURVEYS

HRG equipment type	Equipment make/model	Operating frequency (kHz)	Source level (RMS dB re 1 μPa @1m)	Reference for source level	Pulse duration (milliseconds)	Repetition rate (Hz)	Beam width (degrees)
Mobile, Impulsive							
Deep SBP	Dual Geo-Spark 2000X (400 tip/500J).	0.3	203	Crocker and Fratantonio 2016*.	1.1	4	180

*Applied Acoustics Dura-spark 500J to 2,000J as Proxy.
Key: RMS—Root mean square; dB—Decibel; re—referenced at; m—meters; SBP—Sub-bottom profiler; Hz—hertz; kHz—kilohertz; μPa—microPascal.

The deployment of HRG survey equipment, including the equipment planned for use during Attentive Energy's activities, produces sound in the marine environment that has the potential to result in harassment of marine mammals. 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' proposal to issue an IHA to Attentive Energy was published in the **Federal Register** on June 27, 2022 (87 FR 38094). That notice described, in detail, Attentive Energy's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

NMFS received letters from two environmental non-governmental organizations (eNGOs) (Oceana, Inc. (Oceana) and Clean Ocean Action (COA)). All comments, and NMFS' responses, are provided below, and the letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-attentive-energy-llc-marine-site-characterization-surveys-new*). Please review the letters for full details regarding the comments and underlying justification.

Comment 1: COA does not agree with NMFS' negligible impact determination for North Atlantic right whale (NARW) and states that NMFS provides an inaccurate characterization of impacts to NARW.

Response: NMFS disagrees with the COA's position regarding the negligible impact analysis, and they do not provide a reasoned basis for finding that the effects of the specified activity would be greater than negligible on NARW. The Negligible Impact Analysis and Determination section of the proposed IHA (87 FR 38094) provides a detailed qualitative discussion supporting NMFS' determination that any anticipated impacts from this action would be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With specific regard to NARW, we note that take is authorized for only a very small percentage of the right whale population (see Table 6). However, the numbers of potential incidents of take or animals taken are only part of an assessment and are not, alone, decisively indicative of the degree of impact. In order to adequately evaluate the effects of noise exposure at the population level, the total number of take incidents must be further interpreted in context of relevant biological and population parameters and other biological, environmental, and anthropogenic factors and in a spatially and temporally explicit manner. The effects to individuals of a ''take'' are not necessarily equal. Some take events represent exposures that only just exceed a Level B harassment threshold, which would be expected to result in lower-level impacts, while other exposures occur at higher received levels and would typically be expected to have comparatively greater potential impacts on an individual. Further, responses to similar received levels may result in significantly different impacts on an individual dependent upon the context of the exposure or the status of the individuals (*e.g.,* if it occurred in an area and time where concentrated feeding was occurring, or to individuals

weakened by other effects). In this case, NMFS reiterates that no such higher level takes are expected to occur. The maximum anticipated Level B harassment zone is 141 m, a distance smaller than the precautionary shutdown zone of 500 m. To the extent that any exposure of NARW does occur, it would be expected to result in lower-level impacts that are unlikely to result in significant or long-lasting impacts to the exposed individual and, given the relatively small amount of exposures expected to occur, it is unlikely that these exposures would result in population-level impacts. NMFS acknowledges that impacts of a similar degree on a proportion of the individuals in a stock may have differing impacts to the stock based on its status, *i.e.,* smaller stocks may be less able to absorb deaths or reproductive suppression and maintain similar growth rates as larger stocks. However, even given the precarious status of the NARW, the low-level nature of the impacts expected to occur from this action and the small number of individuals affected supports NMFS' determination that population-level impacts will not occur. The commenters provide no substantive reasoning to contradict this finding, and do not support their assertions of effects greater than NMFS has assumed may occur.

Comment 2: COA and Oceana asserted that NMFS is overestimating the population abundance for NARW.

Response: NMFS agrees that the most up to date population estimate should be used for assessing NARW abundance estimates. The revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently, NMFS updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*), as COA mentioned. We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of NARW or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Attentive Energy's survey activities.

NMFS further notes that the MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS' determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model.

Lastly, as we stated previously and in the notice of proposed IHA (87 FR 38094; June 27, 2022), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route and foraging habitat (which is not affected by the specified activity). The survey area is small (approximately 854 km^2 total area) compared to the size of the NARW migratory Biologically Important Areas (BIA) (269,448 km^2). Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 3: Oceana and COA asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and NARWs in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. Additionally, Oceana and COA state that they are similarly concerned with cumulative impacts of offshore wind development on marine mammal species in the region.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for a separate ''cumulative effects'' analysis of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Attentive Energy is the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated that (1) we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) reasonably foreseeable cumulative effects would also be considered under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Cumulative impacts regarding issuance of IHAs for site characterization survey

activities such as those planned by Attentive Energy have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Attentive Energy's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562; July 7, 2017, 85 FR 21198; April 16, 2020 and 86 FR 26465; May 10, 2021), which are similar to those planned by Attentive Energy under this current IHA request. This Biological Opinion (BiOp) determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment 4: COA is concerned regarding the wide range of marine mammal species that could be impacted by the activities, as well as a lack of baseline data being available for species in the area, specifically harbor seals. In addition, COA has stated that NMFS did not adequately address the potential for cumulative impacts to bottlenose dolphins from Level B harassment over several years of project activities.

Response: We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** notice have some likelihood of occurring in Attentive Energys' survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. Furthermore, NMFS notes that it has previously addressed discussions on cumulative impact analyses in previous comments and references COA back to these specific responses in this Notice.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points towards two sources of information for marine mammal baseline information: the Ocean/Wind Power Ecological Baseline Studies, January 2008—December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (*https://dspace.njstatelib.org/xmlui/handle/10929/68435*) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected*) with annual reports available from 2010 to 2020 (*https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species*) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information.

Based on the information presented, NMFS has determined that no new information has become available, nor do the commenters present additional information, that would change our determinations since the publication of the proposed notice.

Comment 5: Oceana stated that NMFS must utilize the best available science, and suggested that NMFS has not done so, specifically referencing information regarding the NARW such as updated population estimates, habitat usage in the survey area, and seasonality information. Oceana specifically asserted that NMFS is not using the best available science with regards to the NARW population estimate. Similarly, COA ensures that activities covered by this IHA should not occur during peak migratory season or biologically sensitive periods for the affected species.

Response: While NMFS agrees that the best available science should be used for assessing NARW abundance estimates, we disagree that Oceana's cited study represents the most recent and best available estimate for NARW abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently (after publication of the notice of proposed IHA), NMFS updated its species web page to recognize the population estimate for NARW is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of NARW or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Attentive Energy's survey activities.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data.'' The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS' determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and published.

NMFS considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing BIAs and densities provided by Roberts *et al.* (2021). While the commenter has suggested that NMFS consider best available information for recent habitat usage patterns and seasonality, it has not offered any additional information which it suggests should be considered best available information in place of what NMFS considered in its notice of

proposed IHA (87 FR 38094; June 27, 2022).

Lastly, as we stated in the notice of proposed IHA (87 FR 38094; June 27, 2022), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the survey area is extremely small (854 km^2) compared to the size of the NARW migratory BIA (269,448 km^2). Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors. Also, refer to comment two for similar discussion on right whale abundance.

Comment 6: Oceana made comments objecting to NMFS' renewal process regarding the extension of any 1-year IHA with a truncated 15-day public comment period as it violates the MMPA, and suggested an additional 30-day public comment period is necessary for any renewal request.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

In particular, we emphasize that any Renewal IHA does have a 30-day public comment period, and in fact, each Renewal IHA is made available for a 45-day public comment period. The notice of the proposed IHA published in the **Federal Register** on June 27, 2022 (87 FR 38094) made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. As detailed in the **Federal Register** notice for the proposed IHA and on the agency's website, any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the initial IHA period and the possibility of a 1-year renewal. Therefore a member of the public considering commenting on a proposed Initial IHA also knows exactly what activities (or subset of activities) would be included in a proposed Renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible renewal at the time of considering the proposed initial IHA. Reviewers have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed initial IHA, provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Comment 7: Oceana stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to have the least practicable impact on marine mammal species or stocks and their habitats in and around the project site, including through the use of best available technology and methods to minimize sound levels from geophysical surveys such as through the use of technically and commercially feasible and effective noise reduction and attenuation measures.. Oceana additionally states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARW in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 8: Oceana noted that chronic stressors are an emerging concern for NARW conservation and

recovery, and stated that chronic stress may result in energetic effects for NARW. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARW, as disturbance responses in NARW's could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

Response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Attentive Energy will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. Because NARW generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor compared with the survey area (the overlap between the BIA and the proposed survey area will cover approximately 854 km^2 of the 269,448 km^2 BIA). Thus, the transitory nature of NARW's at this location means it is unlikely for any exposure to cause chronic effects, as Attentive Energy's planned survey area and ensonified zones are much smaller than the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARW from Attentive Energy's described survey activities.

Comment 9: Oceana states that Attentive Energy's activities will increase service vessel traffic in and around the project area and that the IHA must include a vessel traffic plan to minimize the effects of increased vessel traffic.

Response: NMFS disagrees with Oceana's statement that the IHA must require a vessel traffic plan. During HRG surveys there are no service vessels required. NMFS agrees that a vessel plan may be potentially appropriate for project construction, but it is not needed for marine site characterization surveys.

Comment 10: Oceana suggests that Protected Species Observers (PSOs) complement their survey efforts at all times when underway, using additional technologies, such as infrared detection devices when in low-light conditions.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** notice. That requirement is included as a requirement of the issued IHA.

Comment 11: Oceana recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) (5.14 meters/second (m/s)) at all times with no exceptions due to the risk of vessel strikes to NARWs and other large whales.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Attentive Energy's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour (kph)) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA) or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 kph) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 kph) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 kph) or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys for which IHAs were issued from NMFS during the survey activities themselves or while transiting to and from survey sites.

Comment 12: Oceana suggests that NMFS require vessels to maintain a separation distance of at least 500 m from NARW at all times.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** notice and was included as a requirement in the issued IHA.

Comment 13: Oceana recommended that the IHA should require all vessels supporting site characterization be equipped with and use Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and use Class A

Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, those activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Attentive Energy, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 14: Oceana stated that the IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies. Oceana recommended requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that address Oceana's recommendations. Attentive Energy is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. This final monitoring report is then made available to the public on NMFS website.

Further, the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, Attentive Energy must immediately report sighting information to the NMFS NARW Sighting Advisory System within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. Attentive Energy may also report the sighting to the U.S. Coast Guard. Additionally, Attentive Energy must report any discoveries of injured or dead marine mammals to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals. All reports and associated data submitted to NMFS are included on the website for public inspection.

Comment 15: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Attentive Energy, the vessel operators, the lead PSO, and any other relevant designees of Attentive Energy operating under the authority of this IHA. The IHA also states that Attentive Energy must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 16: Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publicly available explanation of any exemptions as to why the applicant would not be able to shut down in these situations.

Response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 38094; June 27, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone while geophysical survey equipment is operational. Oceana mentions an exemption to the shutdown for human safety, however, there is no exemption for the shutdown requirement for NARW, ESA-listed species, or any other species.

Attentive Energy is required to implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within an clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for harbor porpoise, and 30 minutes for all other species). If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones.

In regards to reporting, Attentive Energy must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, Attentive Energy is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. We note that if a NARW is detected within the Exclusion Zone before a shutdown is implemented, the NARW and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in Attentive Energy's final monitoring report and made publicly available on NMFS' website. Attentive Energy is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

Comment 17: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 38094; June 27, 2022) and this final IHA a stipulation that when technically feasible, survey equipment

must be ramped up at the start or restart of survey activities. A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. Operators should ramp up sources to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up (or initiation of source use if ramp-up is not technically feasible). NMFS notes that ramp-up is not required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable Exclusion Zones.

Comment 18: Oceana recommended increasing the Exclusion Zone to 1,000m for NARWs with requirements for HRG survey vessels to use PSOs and Passive Acoustic Monitoring (PAM) to establish and monitor these zones.

Response: NMFS notes that the 500 m Exclusion Zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (141 m during sparker use) by a conservative margin to be extra cautious. Commenters do not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a precautionary NARW Exclusion Zone that is larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate.

Regarding the use of acoustic monitoring to implement the exclusion zones, NMFS does not anticipate that acoustic monitoring would be effective for a variety of reasons discussed below and therefore has not required it in this IHA. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.* 2012; McKenna *et al.* 2012; Rolland *et al.* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARWs and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM isn't a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021 and 87 FR 13975, March 11, 2022 for examples).

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 activity, 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 expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks 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' 2021 draft U.S. Atlantic and Gulf of Mexico Stock Assessment Report SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 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)						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	368 [4] (0; 364; 2019)	0.7	7.7
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic Stock	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia Stock	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal Stock	-/-, N	21,968 (0.31; 17,002; 2016).	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic Stock	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic Stock	-/-, N	39,215 (0.3; 30,627; 2016).	306	29
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016).	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016).	519	28
Common dolphin	*Delphinus delphis*	Western North Atlantic Stock	-/-, N	172,974 (0.21, 145,216, 2016).	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic Stock	-/-, N	39,921 (0.27; 32,032; 2016).	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Stock	-/-, N	35,215 (0.19; 30,051; 2016).	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy Stock.	-/-, N	95,543 (0.31; 74,034; 2016).	851	164
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic Stock	-/-, N	61,336 (0.08; 57,637; 2018).	1,729	339
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic Stock	-/-, N	27,300 (0.22; 22,785; 2016).	1,389	4,453

[1] 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 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.fisheries.noaa.gov/national/marine-mammal-protection/*marine-mammal-stock-assessments. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[5] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

As indicated above, all 15 species in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

The temporal and/or spatial occurrence of several cetacean and pinniped species is such that take of these species is not expected to occur either because they have very low densities in the survey area or are known to occur further inshore or offshore than the survey area. These include: blue whale (*Balaenoptera musculus*), Dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), Cuvier's beaked whale (*Ziphius cavirostris*), Mesoplodont beaked whales (*Mesoplodon* spp.), short finned pilot whale (*Globicephala macrorhynchus*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), harp seal (*Pagophilus groenlandicus*), and hooded seal (*Cystophora cristata*). As harassment and subsequent take of these species is not anticipated as a result of the planned activities, these species are not analyzed or discussed further.

Below is a description of the species that have the highest likelihood of occurring in the survey area and are thus expected to be taken by the planned activities as well as further detail informing the status for select species (*i.e.,* information regarding

current Unusual Mortality Events (UMEs) and important habitat areas).

North Atlantic Right Whale

The NARW range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). They are observed year round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where NARW congregate seasonally, including north and east of the survey area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that Attentive Energy's surveys would be concentrated offshore in the New York Bight, some right whales may be present year round however, the majority in the vicinity of the survey areas are likely to be transient, migrating through the area. Some may be present year round however, the majority migrating through.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, NARW calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS, 2015). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of the end of 2021 two NARW calves have documented to have been born during this calving season.

The survey area is part of a migratory corridor Biologically Important Area (BIA) for NARW (effective March-April and November-December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km² in size (compared with the approximately 854 km² of total estimated Level B harassment ensonified area associated with the 8-week planned survey) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. SMA for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off the mouth of the New York Bight, is close to the planned survey area. The SMA, which occurs off the mouth of the New York Bight, is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn (18.5 kph)) for all vessels greater than 65 ft (19.8 m). Attentive Energy survey vessel, regardless of length, would be required to adhere to a 10 kn (18.5 kph) vessel speed restriction when operating within this SMA. In addition, Attentive Energy survey vessel, regardless of length, would be required to adhere to a 10 kn (18.5 kph) vessel speed restriction when operating in any DMA declared by NMFS.

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. As of June 2, 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals that have stranded during the NARW UME has been updated to 50 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=34) and seriously injured free-swimming whales (n=16) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.*

Recent aerial surveys in the New York Bight showed NARW in the planned survey area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33–1041m), but were observed throughout the survey area (Normandeau Associates and APEM, 2020; Zoidis et al., 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook *et al.,* 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the survey area year-round but with lower levels in the summer from July–September.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Gulf of Maine humpback whales are designated as a stock under the MMPA and are also part of the West Indies DPS. However, humpback whales occurring in the survey area are not necessarily from the Gulf of Maine stock. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north

(Waring *et al.,* 2007a; Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic states is their stock identity. Furthermore, King *et al.* (2021) highlights important concerns for humpback whales found specifically in the nearshore environment (<10 km from shore) from various anthropogenic impacts.

Recent aerial surveys in the New York Bight observed humpback whales in the spring and winter, but sightings were reported year round in the area (Normandeau Associates and APEM, 2020). Humpback whales preferred deeper waters near the shelf break, but were observed throughout the area. Additionally, passive acoustic data recorded humpback whales in the New York Bight throughout the year, but the presence was highest in the fall and summer months (Estabrook *et al.,* 2021).

Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 159 known cases (as of June 2, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U. S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

The western north Atlantic stock of fin whales includes the area from Central Virginia to Newfoundland/Labrador Canada. This region is primarily a feeding ground for this migratory species that tends to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Recent aerial surveys in the New York Bight observed fin whales year-round throughout the survey area, but they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data from 2018 to 2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Recently conducted aerial surveys in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data in the survey area detected sei whales throughout the year except January and July, with highest detections in March and April (Estabrook *et al.,* 2021).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45°W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Recent aerial surveys in the New York Bight area found that minke whales were observed throughout the survey area, with highest numbers sighting in the spring months (Normandeau Associates and APEM, 2020).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 122 strandings (as of June 2, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). They are rarely found in waters less than 300 meters deep. The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

Recent aerial studies observed sperm whales in the highest number in the summer, with a preference for the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic recordings of sperm whale recorded them throughout the year, and again highest during spring and summer (Estabrook *et al.,* 2021).

Risso's Dolphin

The status of the Western North Atlantic stock is not well understood. They are broadly distributed in tropical and temperate latitudes throughout the world's oceans, and the Western North Atlantic stock occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Newer aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Normandeau Associates and APEM, 2020).

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Recently conducted aerial surveys in the New York Bight area noted a preference for deeper water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Recent aerial studies confirmed previous studies with observations in fall and winter in the New York Bight area with preference for deep water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200-m isobaths (Waring *et al.,* 2014). They are relatively uncommon in the survey area.

Common Dolphin

The common dolphin is found worldwide in temperate to subtropical seas. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). They have been observed in coastal and offshore waters, observed migrating to mid-Atlantic waters during winter months.

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore stocks (Waring *et al.,* 2016). The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The offshore stock is the only stock likely to occur in the survey area due to it being limited to the Lease area. The Western North Atlantic Offshore stock is generally observed along the outer continental shelf and slope in waters deeper than 34 m and over 34 km offshore (Torres *et al.,* 2003).

Harbor Porpoise

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150-m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (>1,800-m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Pinnipeds (Harbor Seal and Gray Seal)

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30°N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016). They seasonal migrate down to the mid-Atlantic from fall to spring months.

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals are regularly observed in the survey area in the survey area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016). Documented haul outs for gray seas in Long Island area, with a possible rookery on Little Gull Island.

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs (*e.g.,* symptoms of disease) as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. A total of 3,152

reported strandings (of all species) had occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Presently, this UME is non-active and is pending closure by NMFS. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Background on Active Acoustic Sound Sources and Acoustic Terminology

This subsection contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used inasmuch as the information is relevant to the specified activity and to the summary of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.,* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1-m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper,

2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be directed either in a beam or in beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers produce pulsed signals with energy in the frequency ranges, 0.05–4.0 kiloHertz (kHz). The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (*i.e.,* omnidirectional), while other sources planned for use during the planned surveys have some degree of directionality to the beam.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold

would recover over time (Southall *et al.,* 2007).

Animals in the vicinity of Attentive Energy HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to the vessel operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. No mortality, injury or Permanent Threshold Shift (PTS) are expected to occur.

Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals expected from Attentive Energy's surveys given the directionality of the signals for most HRG survey equipment types planned for use and the brief period when an individual mammal is likely to be exposed.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses. In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare. An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been long been equated with stress. The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is currently no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical survey activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given

area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 kn (7.4–9.3 kph). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

Marine Mammal Habitat

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the planned activities will be temporary, insignificant, and discountable.

The effects of Attentive Energy's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform 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 would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based on the nature of the activity, 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 planned 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).

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.

Attentive Energy's HRG sruveys include the use impulsive (sparker) sources, and therefore the RMS SPL thresholds of 160 dB 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).

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 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $\leq L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW)(Underwater)	*Cell 7:* $\leq L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW)(Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic 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 should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. 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 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 acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the survey activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment type used during the planned surveys and the source levels associated with those HRG equipment types.

The results of the Level B harassment ensonified area analysis using the methodology described indicated that, of the HRG survey equipment planned for use by Attentive Energy the only one that has the potential to result in Level B harassment of marine mammals, the Dual Geo-Spark, has a Level B harassment isopleth of 141-m.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2021 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.* 2016a; Curtice *et al.* 2018), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.* 2016b, 2017, 2018).

The density data presented by Roberts *et al.* (2016b, 2017, 2018, 2021) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.*

Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.* 2016b, 2017, 2018, 2021). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.* (2016b, 2017, 2018, 2021) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts *et al.* (2016b, 2017, 2018, 2021) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was

then carried forward in the exposure analysis, with a few exceptions noted later. Estimated seasonal densities (animals/km^2) of marine mammal species that may be taken by the planned survey are in Table 5 below. The maximum seasonal density values used to estimate take numbers are shown in Table 6 below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2021) models provide results at the genus or guild level.

For bottlenose dolphin densities, Roberts *et al.* (2016b, 2017, 2018) do not differentiate by stock. The Western North Atlantic northern migratory coastal stock is generally expected to occur only in coastal waters from the shoreline to approximately the 20-m (65-ft) isobath (Hayes *et al.* 2018). As the Lease Area is located within depths exceeding 20-m, where the offshore stock would generally be expected to occur, all calculated bottlenose dolphin exposures within the survey area were assigned to the offshore stock. Bottlenose dolphins densities were also calculated using the single month with the highest density to account for recent observations from IHAs issued in the New York Bight area, which documented more dolphins than the output of the Roberts' model predicted (86 FR 26465, May 10, 2021 and 85 FR 21198, April 16, 2020).

For long-finned pilot whales, the Roberts *et al.* (2016, 2017) data only provide a single raster grid containing annual density estimate for *Globicephala* species (*i.e.,* short-finned and long-finned pilot whales combined). The annual density raster grid was used to estimate density in the survey area and assumed it applies only to long-finned pilot whales, as short-finned pilot whales are not anticipated to occur as far north as the survey area.

Furthermore, the Roberts *et al.* (2016b, 2017, 2018) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates of Roberts *et al.* (2016, 2018) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* harbor, gray, hooded, and harp). For this IHA, only the harbor seals and gray seals are reasonably expected to occur in the survey area; densities of seals were split evenly between these two species.

TABLE 5—ESTIMATED MARINE MAMMAL DENSITIES (ANIMALS PER km^2) FOR LEASE AREA

Species	Spring	Summer	Fall	Winter	Monthly max	Annual mean
Mysticetes						
North Atlantic Right Whale	0.00352	0.00004	0.00011	0.00172	0.00515	0.00135
Humpback Whale	0.00062	0.00022	0.00036	0.00012	0.00076	0.00033
Fin Whale	0.00258	0.00314	0.00227	0.00162	0.00444	0.00240
Sei Whale	0.00016	0.00003	0.00003	0.00002	0.00025	0.00006
Common Minke Whale	0.00190	0.00075	0.00054	0.00066	0.00286	0.00096
Odontocetes						
Sperm Whale	0.00004	0.00054	0.00037	0.00002	0.00104	0.00024
Risso's Dolphin	0.00018	0.00108	0.00034	0.00046	0.00179	0.00052
Long-finned Pilot Whale	N/A	N/A	N/A	N/A	N/A	0.00471
Atlantic White-sided Dolphin	0.03038	0.01714	0.01310	0.02069	0.05016	0.02033
Short-beaked Common Dolphin	0.05495	0.04535	0.05959	0.13725	0.18987	0.07428
Atlantic Spotted Dolphin	0.00054	0.00599	0.00516	0.00024	0.00843	0.00298
Harbor Porpoise	0.07644	0.00042	0.00175	0.03952	0.12475	0.02953
Common Bottlenose Dolphin	0.01265	0.01828	0.04450	0.02509	0.05284	0.02513
Pinnipeds						
Gray Seal	0.01540	0.00021	0.00015	0.00837	0.01961	0.00604
Harbor Seal	0.01540	0.00021	0.00015	0.00837	0.01961	0.00604

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and planned for authorization.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Dual Geo-Spark 2000X) to the Level B harassment criterion and the total length of the survey trackline are then used to calculate the total ensonified area, or zone of influence (ZOI) around the survey vessel.

Attentive Energy estimates that planned surveys will complete a total of 3,028 km survey trackline during HRG surveys. Based on the maximum estimated distance to the Level B harassment threshold of 141-m (Table 5) and the total survey length, the total ensonified area is therefore 854 km^2 based on the following formula:

$$Mobile\ Source\ ZOI = (Total\ survey\ length \times 2r) + \pi r^2$$

Where:

total survey length = the total distance of the survey track lines within the lease area; and

r = the maximum radial distance from a given sound source to the Level B harassment threshold.

As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur.

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km^2), incorporating the maximum seasonal estimated marine mammal densities as described above. The product is then rounded, to generate an estimate of the total number

of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting take of marine mammals shown below in Table 6:

$$Estimated\ Take = D \times ZOI$$

Where:

D = average species density (per km^2); and
ZOI = maximum daily ensonified area to relevant thresholds.

TABLE 6—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED AND PLANNED TAKES AS A PERCENTAGE OF POPULATION

Species	Abundance*	Estimated Level B takes	Total	
			Level B takes authorized	Percent of abundance
North Atlantic right whale	368	3	3	0.82
Humpback whale	1,396	1	†2	0.14
Fin whale	6,802	3	3	<0.1
Sei whale	6,292	0	†2	<0.1
Minke whale	21,968	2	2	<0.1
Sperm whale	4,349	0	†2	<0.1
Long-finned pilot whale	39,215	4	†15	<0.1
Bottlenose dolphin (W.N. Atlantic Offshore) [a]	62,851	38	38	<0.1
Common dolphin	172,974	162	162	<0.1
Atlantic white-sided dolphin	93,233	26	26	<0.1
Atlantic spotted dolphin	39,921	5	†31	<0.1
Risso's dolphin	32,215	1	†9	<0.1
Harbor porpoise	95,543	65	65	<0.1
Harbor seal	61,336	13	13	<0.1
Gray seal [a]	451,431	13	13	<0.1

* The abundances in this column are based on the NMFS draft 2021 SAR.
† Take request based on average group size using sightings data from Palka et al. (2017, 2021) and CETAP (1982). See Appendix C for data.
[a] This abundance estimate is the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for U.S. population only is 27,300.

The take numbers authorized in Table 6 are consistent with those requested by Attentive Energy. NMFS concurs with Attentive Energy's method of revising take estimates to reflect mean group size where the estimated takes were less than a typical group size (Palka *et al.,* 2017, 2021; CETAP 1982).

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 Measures

NMFS requires that the following mitigation measures be implemented during Attentive Energy's planned marine site characterization surveys. Pursuant to section 7 of the ESA, Attentive Energy is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones would be established around the HRG survey equipment and monitored by protected species observers (PSOs). These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: sparkers), a minimum of one PSO must be on duty on the source vessel during daylight hours and two PSOs must be on duty on the source vessel during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500-m Exclusion Zone for NARW during use of specified acoustic sources (impulsive: sparkers).
- A 100-m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below).

All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic

source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The ramp-up procedure would be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for harbor porpoise and 30 minutes for all other species).

Attentive Energy would implement a 30 minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up not less than 60 minutes prior to the planned ramp-up. This would allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Attentive Energy must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may occur at night only where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for harbor porpoise and 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones. The prestart clearance requirement does not include small delphinids (genera *Stenella, Lagenorhynchus, Delphinus,* or *Tursiops*) or seals.

The pre-clearance zones would be:

- 500-m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100-m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the clock that was paused may resume. The pre-clearance clock will reset if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment (Table 5) would be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delphinidae: Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized number of takes have been met approaches or is observed within the applicable Exclusion Zone, shutdown would occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived), PSOs must use their best professional judgement in making the decision to call for a shutdown.

Upon implementation of a shutdown, the sound source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoise and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers, sonar, Echosounder, etc.).

Seasonal Operating Requirements

As described above, a section of the survey area partially overlaps with a portion of a NARW SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required

to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' NARW reporting systems for the presence of NARW throughout survey operations. Members of the monitoring team would also monitor the NMFS NARW reporting systems for the establishment of DMA. NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Attentive Energy should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 7).

TABLE 7—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area ...	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of Attentive Energy's vessel will abide by the described restrictions.		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

More information on Ship Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The planned survey would occur in an area that has been identified as a biologically important area for migration for NARW. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat or to negatively impact the migration of NARW, thus additional mitigation to address the survey's occurrence in NARW migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Attentive Energy will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena, and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. The vessel, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARW from vessel strikes, including SMAs and DMAs when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- The vessel must reduce speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- The vessel must maintain a minimum separation distance of 500-m (1,640-ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- The vessel must maintain a minimum separation distance of 100-m (328-ft) from non-ESA-listed baleen whales.
- The vessel must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50-m (164-ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.,* for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARW throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessel will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided

upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.* In the event where third-party PSOs are not required, crew members serving as lookouts must receive training on protected species identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements.

Attentive Energy shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard the project vessel for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard the project vessel, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, 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.

Monitoring Measures

Attentive Energy must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Attentive Energy must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but Attentive Energy is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

At a minimum, Attentive Energy plans to use a PSO during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on the survey vessel, conducting visual observations at all times on the active survey vessel during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hr of observation per 24 hr period.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Attentive Energy shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they

changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov* and *ITP.Harlacher@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel name (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;
7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
3. PSO who sighted the animal;
4. Time of sighting;
5. Initial detection method;
6. Sightings cue;
7. Vessel location at time of sighting (decimal degrees);
8. Direction of vessel's travel (compass direction);
9. Speed of the vessel(s) from which the observation was made;
10. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
11. Species reliability (an indicator of confidence in identification);
12. Estimated distance to the animal and method of estimating distance;
13. Estimated number of animals (high/low/best);
14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
16. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
18. Equipment operating during sighting;
19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
20. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, Attentive Energy must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that Attentive Energy personnel discover an injured or dead marine mammal, regardless of the cause of injury or death or in the event that personnel involved in the survey activities discover an injured or dead marine mammal, Attentive Energy must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Attentive Energy must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
12. To the extent practicable, photographs or video footage of the animal(s).

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 majority of our analysis applies to all the species listed in Table 3, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate subsections below.

NMFS does not anticipate that serious injury or mortality would result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole, refer to Potential Effects and Estimated Take section for further discussion.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141-m. Although this distance is assumed for all survey activity in estimating take numbers planned for authorization and evaluated here, in reality, the Dual Geo-Spark 2000X would likely not be used across the entire 24-hour period and across all 56 days. As noted in their application, the other acoustic sources Attentive Energy has included in their application have minimal Level B harassment zones. Therefore, when not using the sparker, the ensonified area surrounding the vessel is small compared to the overall distribution of the animals and ambient sound in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the survey area overlaps a migratory corridor BIA for NARW. Due to the fact that the planned survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Attentive Energy's planned activities. The 500-m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG

equipment types planned for use. The authorizations for Level B harassment takes of NARW are not expected to exacerbate or compound upon the ongoing UME. The limited NARW Level B harassment takes authorized are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Attentive Energy's activities, it is unlikely that NARW prey availability would be adversely affected. Accordingly, NMFS does not anticipate NARW takes that would result from Attentive Energy's activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Attentive Energy's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale stranding's have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not authorized. Implementation of required mitigation would further reduce this potential. Therefore, NMFS is not authorizing any Level A harassment.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

Biologically Important Areas for Other Species

As previously discussed, impacts from the project are expected to be localized to the specific area of activity and only during periods of time where Attentive Energy's acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect this action to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Attentive Energy's as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Attentive Energy's survey activities.

In summary and as described above, the following factors primarily support our 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 (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for NARW, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration; and
- The mitigation measures, including effective visual monitoring, and shutdowns are expected to minimize potential impacts to marine mammals.

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 planned 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.

NMFS plans to authorize incidental take (by Level B harassment only) of 15 marine mammal species (with 15 managed stocks). The total amount of takes planned for authorization relative to the best available population abundance is less than 1 percent for all stocks (Table 7).

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would 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 would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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.

NMFS OPR is authorizing take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

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 review the action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to Attentive Energy authorizing take, by Level B harassment, incidental to conducting marine site characterization surveys off of New York and New Jersey in the New York bight for a period of one year, which includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: August 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–17978 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC291]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold online and in-person public meetings.

DATES: The Pacific Council and its advisory entities will meet September 6–14, 2022 in Boise, ID. The Pacific Council meeting will begin on Friday, September 9, 2022, at 8 a.m. Mountain Time (MT), reconvening at 8 a.m. on Saturday, September 10 through Wednesday, September 14, 2022. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Friday, September 9, to address national security matters, international negotiations, litigation, or personnel matters including appointments to advisory bodies. The Pacific Council will meet as late as necessary each day to complete its scheduled business. The Pacific Council meeting will be held in a hybrid of remote and in-person participation. The Pacific Council's Budget Committee and groundfish and highly migratory species advisory entities will meet in-person in Boise. All other advisory entities will meet by webinar only.

ADDRESSES:

Meeting address: Meetings of the Pacific Council and its groundfish and highly migratory species advisory entities will be held at the Riverside Hotel, 2900 Chinden Boulevard, Boise, ID 83714; telephone: (208) 343–1871.

Meetings will be held in-person and online. Specific meeting information, including directions on joining meetings, connecting to the live stream broadcast, and system requirements will be provided in the meeting materials on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The September 2022 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. MT Friday, September 9, 2022, and through Wednesday, September 14, 2022. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, August 19, 2022.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period
1. Comments on Non-Agenda Items
C. Administrative Matters
1. Research and Data Needs
2. Equity and Environmental Justice
3. Council Meeting and Process Efficiencies
4. Marine Planning
5. Fiscal Matters
6. Approval of Council Meeting Record
7. Membership Appointments and Council Operating Procedures
8. Future Council Meeting Agenda and Workload Planning
D. Salmon Management
1. Methodology Review—Final Topic Selection and Update on Model Improvements
E. Pacific Halibut Management
1. 2023 Catch Sharing Plan and Annual Regulations
2. Commercial-Directed Fishery Regulations for 2023
F. Habitat Issues
1. Current Habitat Issues
G. Groundfish Management
1. National Marine Fisheries Service Report
2. Workload and New Management Measure Update
3. Electronic Monitoring Update
4. Methodology Review—Preliminary Fishery Impact Model Topics and Final Assessment Methodologies
5. Stock Definitions—Update
6. Non-Trawl Area Management
7. Stock Assessment Check-In and Plan—Final Action
8. Trawl Catch Share Program—Cost Project
9. Trawl Catch Share Program and Inter-Sector Allocation Review—Planning
10. Inseason Adjustments—Final Action
H. Ecosystem Management
1. Fishery Ecosystem Plan Initiatives Appendix and New Initiative
2. Western Regional Action Plan
I. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. International Management Activities
3. Exempted Fishing Permits—Final Action
4. Biennial Harvest Specifications and Management Measures—Preliminary
5. Swordfish Management and Monitoring Plan

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, August 19, 2022.

Schedule of Ancillary Meetings—All Times Mountain Time

Day 1—Tuesday, September 6, 2022

Scientific and Statistical Committee 9 a.m.

Day 2—Wednesday, September 7, 2022

Salmon Technical Team 9 a.m.
Scientific and Statistical Committee 9 a.m.

Day 3—Thursday, September 8, 2022

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Ecosystem Advisory Subpanel 9 a.m.
Habitat Committee 9 a.m.
Scientific and Statistical Committee 9 a.m.
Enforcement Consultants 10 a.m.
Budget Committee 1 p.m.

Day 4—Friday, September 9, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Ecosystem Advisory Subpanel 9 a.m.
Habitat Committee 9 a.m.
Enforcement Consultants As Necessary

Day 5—Saturday, September 10, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 6—Sunday, September 11, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 7—Monday, September 12, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 8—Tuesday, September 13, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 9—Wednesday, September 14, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: August 17, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–18058 Filed 8–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0011]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Interviews Assessing Community Awareness of Dam and Levee Risks and Benefits; OMB Control Number 0710–DAMS.

Type of Request: New collection.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Average Burden per Response: 75 minutes.

Annual Burden Hours: 75 hours.

Needs and Uses: USACE is requesting approval to collect information via interviews to inform strategic communications planning for the USACE Dam and Levee Safety Programs. The information collection will target a diverse sample of communities affected by dams and or levees. Information collected in interviews will inform USACE's understanding of communities' levels of awareness, knowledge, means of knowledge acquisition, and behavioral responses related to the risks and benefits of dams and/or levees. Engagement with community stakeholders and representatives of local populations will provide USACE with information on how best to communicate the benefits and risks of dams and levees with the goal of enhancing flood risk management. Insights from this information collection will be used to develop guidance and toolkits for the Dam and Levee Safety Programs.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Oreska.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17972 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0104]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Organizational Climate Survey; OMB Control Number 0704–DOCS.

Needs and Uses: The Defense Organizational Climate Survey (DEOCS) is fielded in response to Section 572 of the National Defense Authorization Act for Fiscal Year 2013. A May 2019 memo from the Acting Secretary of Defense directed that the goals of the DEOCS include developing and providing leaders with assessment tools ''that help them with developing an appropriate course of action from a suite of interventions and provide them with feedback on their impact of their efforts.'' The information gathered from the DEOCS will be used by commanders, prevention workforce personnel, equal opportunity officers, survey administrators, and other leaders to assess the unit's command climate and measure the risk and protective factors associated with the six strategic target outcomes (sexual assault, sexual harassment, racial/ethnic discrimination, suicide, readiness, and retention). Based on the DEOCS results, commanders, leaders, and their survey administrators will develop an action plan to positively impact their organization's leadership climate. The survey results are provided to the commander/leader and their survey

administrator. Survey responses could also be used in future analyses. The statutory and policy requirements for the DEOCS can be found in the following:

- FY13 NDAA, Section 572
- FY14 NDAA, Section 1721
- Memo from the Acting Secretary of Defense, May 2019

Affected Public: Individuals or households.

Annual Burden Hours: 794,549.

Number of Respondents: 1,589,098.

Responses per Respondent: 1.

Annual Responses: 1,589,098.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17971 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0047]

Submission for OMB Review; Comment Request

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

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TRICARE Prime Enrollment, Disenrollment and Primary Care Manager Change Form; DD Form 2876; OMB Control Number 0720–0008.

Type of Request: Extension.

Number of Respondents: 258,899.

Responses per Respondent: 2.

Annual Responses: 517,798.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 129,449.5.

Needs and Uses: The information collection requirement is necessary to obtain the TRICARE beneficiary's personal information needed to: (1) Complete his/her enrollment into TRICARE Prime health plan, (2) change the beneficiary's enrollment (new Primary Care Manager, enrolled region, add/drop a dependent, etc.), or (3) dis-enroll the beneficiary. All TRICARE beneficiaries have the option of enrolling, changing their enrollment or dis-enrolling using the DD Form 2876, the Beneficiary Web Enrollment portal, or by calling their regional Managed Care Support Contractor. Although the telephonic enrollment/change is the preferred method by the large majority of beneficiaries, many beneficiaries prefer using the form to document their enrollment date and preferences.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Michael Ciccarone.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17965 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0049]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Interview Survey Form; INV Form 10; OMB Control Number 0705–0004.

Type of Request: Revision.

Number of Respondents: 56,484.

Responses Per Respondent: 1.

Annual Responses: 56,484.

Average Burden per Response: 6 minutes.

Annual Burden Hours: 5,648.4 hours.

Needs and Uses: The Interview Survey Form, INV 10, is mailed by DCSA, to a random sampling of record and personal sources contacted during background investigations when investigators have performed fieldwork. The INV 10 is used as a quality control instrument designed to ensure the accuracy and integrity of the investigative product. The form queries the recipient about the investigative procedure exhibited by the investigator, the investigator's professionalism, and the information discussed and reported.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17964 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0102]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05 Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualitative Data Collection on Access to Food on and Near Military Installations; OMB Control Number 0704–AFMI.

Needs and Uses: The Military Community & Family Policy (MC&FP) within the DoD's Office of the Deputy Assistant Secretary of Defense is requesting Office of Management and Budget clearance for Qualitative Data Collection on Enlisted Service Member Access to Food on or Near Military Installations. MCFP will collect qualitative data through interviews and/or focus groups with Enlisted Active Duty Service members and spouses of Enlisted Active Duty Service members to understand the eating and spending patterns of the Enlisted military. Survey data has shown that 24% of the Active Duty Force report some level of food insecurity; the prevalence is higher in the Enlisted population and higher for those who live on-base than off-base. Similar data patterns were seen in the Active Duty Spouse Survey. At this time, little is known about the underlying causes of higher rates of food insecurity in the military, especially as it pertains to those who experience food insecurity while living on a base with dining facilities. Qualitative data collection will allow the DoD to collect data that will inform targeted initiatives to reduce food insecurity. Data collection will address the access to nutritious food and financial management of Service members and spouses' financial management practices.

Affected Public: Individuals or households.

Annual Burden Hours: 240.

Number of Respondents: 360.

Responses per Respondent: 1.

Annual Responses: 360.

Average Burden per Response: 40 minutes.

Frequency: Once.

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17966 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0074]

Submission for OMB Review; Comment Request

AGENCY: National Guard Bureau (NGB), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Education Verification for National Guard Enlistees; NGB Forms 900 and 901; OMB Control Number 0704–0584.

Type of Request: Revision.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 833.

Needs and Uses: The information collection is necessary to verify education status and projected graduation dates for students who agree to enlist in the Army National Guard. Information gathered by the NGB Form 900 is required to verify and determine the graduation dates for high school juniors who enlist in the National Guard. Information gathered by the NGB Form 901 is required to verify the enrollment and graduation dates for college students who enlist in the National Guard. The National Guard will use this information to schedule basic training dates to accommodate a student's educational obligations, thereby ensuring that the enlistee will complete his or her education in a timely manner.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17963 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0103]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Community Capacity Inventory; OMB Control Number 0704–CCIS.

Needs and Uses: The purpose of the Community Capacity Inventory (CCI) is to provide a tool to help military leadership and family service providers at the Service and Program level make informed decisions about resource allocation and service delivery. The evidence-informed online tool is designed to assist commanders in periodically assessing the programs within the Military Family Readiness System. Ultimately the CCI assist commanders in assessing whether the current resources available to unit-level personnel are accessible and sufficient, or if outreach, counseling, coaching, education, skill building and informal networks need to be augmented or re-allocated to improve the quality and/or accessibility of support.

Affected Public: Individuals or households.

Annual Burden Hours: 5,250 hours.

Number of Respondents: 10,500.

Responses per Respondent: 1.

Annual Responses: 10,500.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17970 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Notice of Intent To Prepare a Draft Tiered Environmental Impact Statement for the New York and New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) New York District is preparing an integrated Draft Feasibility

Report/Tiered Environmental Impact Statement (EIS) for the New York and New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study (NYNJHATS). The study is assessing the feasibility of coastal storm risk management alternatives to be implemented within the defined study area with a specific emphasis on the New York and New Jersey Harbor, including Upper and Lower Bays, Newark Bay, Raritan Bay, Sandy Hook Bay, Jamaica Bay, Gravesend Bay, Sheepshead Bay, as well as other Bays, the tidally affected stretches of the Passaic and Hackensack Rivers, and the Hudson River to Troy, New York, as well as numerous other tributaries that discharge into New York Harbor. This is the third Notice of Intent to be published for this study.

DATES: Comments and suggestions must be submitted by September 21, 2022.

ADDRESSES: Pertinent information about the study can be found at: *https://www.nan.usace.army.mil/NYNJHATS.* Interested parties are welcome to send written comments and suggestions concerning the scope of issues to be evaluated within the Draft Tiered EIS to Cheryl R. Alkemeyer, NEPA Lead, Environmental Analysis Branch, Watershed Section, Planning Division, U.S. Army Corps of Engineers, New York District. Mail: Cheryl R. Alkemeyer, USACE Planning Environmental 17–421 c/o PSC Mail Center, 26 Federal Plaza, New York, NY 10278; phone: (917) 790–8723; email: *nynjharbor.tribstudy@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the overall NYNJHAT Study should be directed to Bryce Wisemiller, Project Manager, U.S. Army Corps of Engineers, New York District, Programs and Project Management Division, Civil Works Programs Branch. Mail: Bryce W. Wisemiller, USACE Programs and Project Management 17–401, c/o PSC Mail Center, 26 Federal Plaza, New York, NY 10278; Phone: (917) 790–8307; email: *nynjharbor.tribstudy@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background and Purpose and Need for Proposed Action

In 2012, Hurricane Sandy caused considerable loss of life, extensive damage to development, and massive disruption to the North Atlantic Coast. The effects of this storm were particularly severe because of its tremendous size and the timing of its landfall during spring high tide. Twenty-six states were impacted by Hurricane Sandy, and disaster declarations were issued in 13 states. New York and New Jersey were the most severely impacted states, with the greatest damage and most fatalities in the New York Metropolitan Area. Flood depths due to the storm surge were as much as nine feet in Manhattan, Staten Island, and other low-lying areas within the New York Metropolitan Area. At the time, Hurricane Sandy was the second costliest hurricane in the nation's history and the largest storm of its kind to hit the U.S. east coast. The storm exposed vulnerabilities associated with inadequate coastal storm risk management measures and lack of defense to critical transportation and energy infrastructure.

On January 29, 2013, President Obama signed into law the Disaster Relief Appropriations Act of 2013 (Public Law [Pub. L.] 113–2), to assist in the recovery in the aftermath of Hurricane Sandy. The USACE North Atlantic Division was authorized by Public Law 113–2 to commence the North Atlantic Coast Comprehensive Study (NACCS) to investigate coastal storm risk management strategies for areas impacted by the storm. In January 2015, USACE completed the NAACS, which identified high-risk areas on the Atlantic Coast warranting further investigation for flood risk management solutions. The NYNJHAT focus area was one of the three focus areas identified, along with the Nassau County Back Bays and the New Jersey Back Bays studies. USACE is authorized under Public Law 84–71, June 15, 1955 (69 Stat. 132), as modified, to conduct an investigation into potential coastal storm risk management solutions within the NYNJHAT study area.

The USACE New York District, in partnership with the New York State Department of Environmental Conservation (NYSDEC) and the New Jersey Department of Environmental Protection (NJDEP) as the non-federal sponsors, are undertaking this study. In addition, the City of New York and the New York State Department of State are non-federal partners. The Feasibility Cost Sharing Agreement (FCSA) was executed on July 15, 2016 between the USACE New York District, the NYSDEC, and NJDEP.

2. Study Area

The study area encompasses approximately 2,150 square miles and includes parts of Bergen, Passaic, Morris, Essex, Hudson, Union, Somerset, Middlesex, and Monmouth Counties in New Jersey and Rensselaer, Albany, Columbia, Greene, Duchess, Ulster, Putnam, Orange, Westchester, Rockland, Bronx, New York, Queens, Kings, Richmond, and Nassau Counties in New York. The study area extends upstream on the Hudson River to the federal lock and dam at Troy, New York, the Passaic River to the Dundee Dam, and the Hackensack River to the Oradell Reservoir, and numerous other smaller tidally influenced tributaries to the harbor.

3. USACE Decision Making

As required by the Council on Environmental Quality's Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies all reasonable alternatives to the proposed federal action that meet the purpose and need will be considered in the Draft Tiered EIS. The focused array of alternatives formulated range from harbor-wide coastal storm risk management methods to land-based, perimeter methods, with three alternatives between. All alternatives are anticipated to also include complementary nonstructural measures and natural and nature-based features as appropriate and feasible. To be conservative, all other ongoing studies and projects by USACE and other agencies that can reasonably be expected to be funded and approved for construction by early 2023 are assumed to be in place as part of this study's assumed future ''without project'' condition.

NEPA requires federal agencies, including USACE, to consider the potential environmental impacts of their proposed actions and any reasonable alternatives before undertaking a major federal action, as defined by 40 CFR 1508.18. Due to the complexity and size of the project the EIS will be conducted in two stages or tiers. Tiering, which is defined in 40 CFR 1508.28, is a means of making the environmental review process more efficient by allowing parties to ''eliminate repetitive discussions of the same issues and to focus on the actual issues suitable for decision at each level of environmental review'' (40 CFR 1502.20).

A tiered review consists of two stages: a broad-level review and subsequent specific detailed reviews. The broad-level review identifies and evaluates the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it establishes the standards, constraints, and processes to be followed in the specific detailed reviews. As proposed alternatives are developed and refined, incorporating a higher level of detail, the specific detailed reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all specific

detailed reviews will collectively comprise a complete environmental review addressing all required elements.

A full Tier 1 and Tier 2 EIS analysis consistent with USACE guidance and policy will be performed for this project and will include a public comment period and public engagement for the respective drafts to elicit and incorporate public input into the EISs. The Tier 1 EIS will be completed as part of the feasibility study, with the Tier 2 EIS being done if and when the project advances to the next phase of development, the preconstruction, engineering and design phase. Tiering NEPA expedites the resolution of big-picture issues so that subsequent studies can focus on project-specific impacts and issues. Tiering also allows environmental analyses for each Tier 2 project to be conducted closer in time to the actual construction phase, or as funds become available for construction.

4. Public Participation

USACE, NYSDEC, and NJDEP hosted three agency workshop meetings in January and February 2017, with representatives from over 100 federal and state agencies, as well as representatives from local agencies and towns. The purpose of those meetings was to receive input on the scope of the study, the problems, needs, opportunities and constraints for the study, and to identify additional stakeholders and areas of unaddressed coastal storm risk.

USACE initially announced the preparation of an integrated Feasibility Report/Tiered EIS for study in the February 13, 2018 **Federal Register**. The 45-day NEPA scoping period (July 6–August 20, 2018) was extended to November 5, 2018 based on requests from elected officials and the public. Nine public NEPA scoping meetings were held throughout the study area. Subsequent to the publication of the February 13, 2018 NOI, the NYNJHATS was granted an exemption from the requirement to complete the feasibility study within 3 years, as required in section 1001(a) of the Water Resources Reform and Development Act of 2014. This exemption was granted on October 31, 2018 on an interim basis, and allowed for an additional 15 months to complete the Draft Integrated Feasibility Report and Tier 1 EIS. Therefore, in order to align the revised study schedule with the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR parts 1500–1508), a Notice to Withdraw the original NOI was published in the February 13, 2019 **Federal Register**.

To further provide the public with study information prior to the draft report, an Interim Report was released on February 19, 2019 that detailed the preliminary economic, environmental, engineering and other analyses performed to date for the above referenced alternatives. Eight public meetings related to the Interim Report were held. USACE published a second NOI in the January 13, 2020 **Federal Register** but shortly after its publication the study was substantially curtailed due to lack of funding. A second Notice to Withdraw was published in the **Federal Register** on June 1, 2020. In October of 2021 the study was restarted with the resumption of federal funding and USACE is preparing for the release of a Draft Tiered EIS in late September of 2022. Comments, concerns and information submitted to USACE during the scoping period and since the Interim Report's release are being evaluated and considered during the development of the Draft Tiered EIS.

5. Lead and Cooperating Agencies

USACE is the lead federal agency for the preparation of this Tiered EIS in order to meet the requirements of the NEPA and the NEPA Implementing Regulations of the President's Council on Environmental Quality (40 CFR 1500–1508). The following agencies have accepted the invitation to be Cooperating Agencies: U.S. Coast Guard, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the National Park Service, and the Federal Emergency Management Agency. The preparation of a Tiered EIS will be coordinated with New York State, New Jersey State, the City of New York, and local municipalities with discretionary authority relative to the proposed actions.

6. Proposed Action and Study Alternatives

Early in the study and during the scoping period, USACE engaged with stakeholders and the public to seek input on the purpose and need and the proposed study alternatives. Six alternatives, including the No Action Alternative, were identified, and will be presented in the Draft Integrated Feasibility Report/Tiered EIS: Alternative 1—No Action Alternative; Alternative 2—NY/NJ Harbor-Wide Gate/Beach Restoration; Alternative 3a—Multiple Bay/Basin Gate/Floodwall/Levee; Alternative 3b—Multiple Bay/Basin Gate/Floodwall/Levee; Alternative 4—Single Water Body gate/Floodwall/Levee; and, Alternative 5—Perimeter Only Solutions. Additional information on the Action Alternatives can be found on the NYNJHATS website at *https://www.nan.usace.army.mil/NYNJHATS.*

7. Study Schedule

The current NYNJHAT Study schedule anticipates a release of the Draft Integrated Feasibility Report/Tiered EIS in September 2022, with a public review and comment period occurring between September—December 2022. The Agency Decision Milestone is anticipated to occur in April 2023, with a Final Integrated Feasibility Report/Tiered EIS scheduled for January 2024 and a Chief of Engineers Report currently approved to be completed no later than June 2024.

8. Anticipated Impacts, Permits, and Authorizations

An EIS is required when impacts are anticipated to be significant to one or more resources as a result of a federal action. The Draft Tiered EIS will analyze the full range of direct, indirect, and cumulative impacts of the alternatives to include effects from construction and operation of tide gates and storm surge barriers, levees, floodwalls, seawalls, deployable traffic and pedestrian gates as well as several other structural and non-structural measures as well as natural and nature-based features where appropriate and feasible. Potentially significant issues to be analyzed include impacts to waters of the United States (including wetlands), aquatic resources, and endangered and threatened species and their habitats. Other impacts that will be analyzed include hydrology and water quality, air quality, land use, navigation, cultural resources, aesthetics, environmental justice, community cohesion, recreation, transportation and traffic, and community services. Anticipated permits and authorizations will depend on the selected Action Alternative and may include a need for mutual acceptability with the Department of Interior for measures located on National Park Service land. In addition, many other federal, state, and local authorizations will be required for the Project. Applicable federal laws include the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammals Protection Act, Rivers and Harbors Act, Clean Water Act, and the Coastal Zone Management Act. USACE is also conducting government-to-government Tribal consultations.

USACE has chosen to use the NEPA process to fulfill its obligations under the National Historic Preservation Act (NHPA). While USACE's obligations

under the NEPA and the NHPA are independent, the regulations implementing section 106 of the NHPA, at 36 CFR 800.8(c) allow the NEPA process and documentation to substitute for various aspects of the NHPA review. This process is intended to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project could have on the human environment. During preparation of the Draft Tiered EIS USACE will ensure that the NEPA process will fully meet all NHPA obligations.

USACE invites all affected federal, state and local agencies, affected Native American Tribes, and other interested parties, and the general public to comment on the scope of this Draft Tiered EIS and to provide input into the potential significant impacts associated with the alternatives. Additional information including the Interim Report can be viewed at the study website: *https://www.nan.usace.army.mil/NYNJHATS.*

Dated: August 16, 2022.

Reinhard W. Koenig,

Programs Director, North Atlantic Division.

[FR Doc. 2022–18029 Filed 8–19–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0012]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Judge Advocate General's Corps Career Programs Applications and Interviews; OPNAV Form 1070/3; OMB Control Number 0703–0074.

Type of Request: Revision.

JAGC Student Program/Direct Accession Application and Structured Interviews

Number of Respondents: 500.
Responses per Respondent: 1.
Annual Responses: 500.
Average Burden per Response: 3 hours.
Annual Burden Hours: 1,500.

Internship/Externship Program Application (OPNAV 1070/3)

Number of Respondents: 100.
Responses per Respondent: 1.
Annual Responses: 100.
Average Burden per Response: 1 hour.
Annual Burden Hours: 100.

Total

Number of Respondents: 600.
Annual Responses: 600.
Annual Burden Hours: 1,600.

Needs and Uses: This information requirement is needed to determine the eligibility, competitive standing, and scholastic and leadership potential of students and lawyers interested in the U.S. Navy Judge Advocate General's Corps (JAGC) Internship Program, Student Program, or Direct Accessions Program. The online system application is used for both the Student Program and Direct Accession Program. The Student Program offers law students an opportunity to apply for a commission to the JAGC. The Direct Accessions Program offers practicing attorneys the opportunity to apply for a commission to the JAGC. A structured interview is offered to applicants judged to be most competitive for the JAGC Student Program or Direct Accession Program. The Internship/Externship Program Application (OPNAV Form 1070/3), is available throughout the year for programs offered in the summer, fall and spring. The Internship/Externship Program offers law students the opportunity to intern with the JAGC while in law school.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17961 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0027]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Commander, Navy Installations Command, 716 Sicard Street SE Suite 1000, Washington, DC 20374–5140, or call Ms. Sonya Martin at 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Family Accountability and Assessment System; OMB Control Number 0703–FAAS.

Needs and Uses: The primary purpose of the Navy Family Accountability and Assessment System (NFAAS) is personnel accountability following a natural or man-made disaster for all Active Duty, Reserve, Navy Civilians, Contractors serving Outside the Continental United States, and their dependents. NFAAS also assesses the impact of the disaster on Navy families and Command's ability to fulfill its missions by providing services and tracking support provided to families in recovery. Additionally, NFAAS supports the sponsor and family members during Sailor Individual Augmentation deployments.

Affected Public: Individuals or households.

Annual Burden Hours: 166,351.75.

Number of Respondents: 665,407.

Responses per Respondent: 2.

Annual Responses: 1,330,814.

Average Burden per Response: 7.5 minutes.

Frequency: Semi-Annually.

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17969 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0014]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Optimized Fleet Response Plan Phase Variation in Signature and Destructive Behaviors; OMB Control Number 0703–OFRP.

Type of Request: New collection.

Number of Respondents: 585.

Responses per Respondent: 1.

Annual Responses: 585.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 292.5 hours.

Needs and Uses: Navy leaders in the Navy 21st Century Office (OPNAV N17) have engaged with researchers at the Naval Postgraduate School (NPS) through the NPS Naval Research Program to conduct research to investigate if signature and destructive behaviors vary across stages of the Optimized Fleet Response Plan (OFRP). The OFRP is a fleet force model that includes 5 phases: basic, advanced, integrated, sustainment, and maintenance. Ships cycle through the phases to maintain employability and preserve maintenance, modernization, and workup. Anecdotal and observational evidence suggests variation in behaviors across the phases, and, in particular, an uptick in destructive behaviors during the maintenance phase. Congruent with research findings, the Chief of Naval Operations has directed the Navy to create a ''Culture of Excellence,'' noting that by focusing on positive, signature behaviors, the Navy can build and sustain a lethal force of tough sailors who are ethical and masters of their trade. The Culture of Excellence Campaign's Perform to Plan effort will empower warfighting capability by fostering psychological, physical, and emotional toughness. To meet this goal, the Navy needs to understand what encourages signature behaviors and reduces destructive behaviors and how these behaviors impact readiness.

The overarching aim of this study is to support the Navy Culture of Excellence Campaign's Performance to Plan effort to encourage signature behaviors and reduce destructive behaviors. The study will answer three questions: What are the rates of signature & destructive behaviors during 3 phases of OFRP? Do rates differ by organizational command (department)? How do signature & destructive behaviors impact readiness?

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17968 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0017]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title: Associated Form; and OMB Number: COVID–19 Behavioral Health Surveillance Survey; OMB Control Number 0703–BHSS.

Type of Request: New collection.

Number of Respondents: 25,000.

Responses per Respondent: 2.

Annual Responses: 50,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 25,000.

Needs and Uses: Information about the impacts of the COVID–19 pandemic on service member health and readiness is urgently needed to inform the military's response to the pandemic and to ensure service member health and readiness. The proposed anonymous, web-based COVID–19 Behavioral Health Surveillance survey will provide unit-level and service-wide information about the effects of the pandemic on Sailors and Marines. Unit commanders will be provided with critical information about specific COVID–19 related challenges service members face so that they can employ strategies to mitigate the harms associated with the pandemic. The survey asks about a range of issues related to the COVID–19 pandemic, including its effects on service members' ability to effectively perform their duties, home life and relationships, preventative health behaviors, and mental/behavioral health and readiness.

The surveillance effort will involve an initial assessment, which may be followed by a 6-month follow-up assessment using the same survey. It will be possible to use data resulting from repeated surveillance to determine changes over time in unit-level health and readiness.

Affected Public: Individuals or households.

Frequency: Survey will be fielded twice.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–17962 Filed 8–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act of 1974; System of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Defense Nuclear Facilities Safety Board (DNFSB) proposes to establish a new system of records titled ''DNFSB—10, Reasonable Accommodation Records.'' This system of records will include information that DNFSB collects and maintains records on applicants for employment, and employees who request and/or receive reasonable accommodations from DNFSB for medical or religious reasons.

DATES: Submit comments on or before October 4, 2022. This action will be applicable on October 5, 2022. unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit written comments at any time prior to the comment deadline by either of the following methods:

Email: Send comments to *comment@dnfsb.gov.* Please include ''Reasonable Accommodation SORN'' in the subject line of your email.

Mail or Hand Delivery: Send hard copy comments to the Defense Nuclear Facilities Safety Board, Attn: General Manager, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: James Biggins, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7000 (Toll Free (800) 788–4016.)

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Defense Nuclear Facilities Safety Board (DNFSB) proposes to establish a new system of records titled ''DNFSB–10, Reasonable Accommodation Records.'' It applies to DNFSB's collection and maintenance of records on applicants for employment, employees, and other individuals who participate in DNFSB programs or activities who request or receive reasonable accommodations or other appropriate modifications from DNFSB for medical or religious reasons.

Title V of the Rehabilitation Act of 1973, as amended, prohibits discrimination in services and employment on the basis of disability, and Title VII of the Civil Rights Act of 1974 prohibits discrimination, including discrimination based on religion. These prohibitions on discrimination require Federal agencies to provide reasonable accommodations to individuals with disabilities and those with sincerely held religious beliefs unless doing so would impose an undue hardship. In some instances,

individuals may request modifications to their workspace, schedule, duties, or other requirements for documented medical reasons that may not qualify as a disability, but which may necessitate an appropriate modification to workplace policies and practices.

Reasonable accommodations may include, but are not limited to: Making existing facilities readily accessible to individuals with disabilities; restructuring jobs, modifying work schedules or places of work, and providing flexible scheduling for medical appointments or religious observance; acquiring or modifying equipment or examinations or training materials; providing qualified readers and interpreters, personal assistants, service animals; granting permission to wear religious dress, hairstyles, or facial hair or to observe a religious prohibition against wearing certain garments; considering requests for medical and religious exemptions to specific workplace requirements; and making other modifications to workplace policies and practices.

DNFSB's Division of Human Resources processes requests for reasonable accommodation from employees and applicants for employment who require an accommodation due to a medical or religious reason. It also processes requests based on documented medical reasons that may not qualify as a disability but that necessitate an appropriate modification to workplace policies and practices.

The system of records includes documentation provided in support of the request, any evaluation conducted internally or by a third party under contract to DNFSB, the decision to grant or deny a request, and the details and conditions of the reasonable accommodation. These materials are listed more specifically below.

DNFSB has provided a report of this system of records to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A- 108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

SYSTEM NAME AND NUMBER:

DNFSB –10, Reasonable Accommodation Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

SYSTEM MANAGER:

Director, Human Resources Division, Defense Nuclear Facilities Safety Board, Office of the General Manager, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

Telephone: (202) 694–7000 (Toll Free (800) 788–4016).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302; The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR 1614 (Federal Sector Equal Employment Opportunity); 42 U.S.C. 2000bb; Executive Order 13163 (Increasing the Opportunity for Individuals with Disabilities To Be Employed in the Federal Government) (July 26, 2000); Executive Order 13164 (Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation) (July 26, 2000); and Executive Order 13548 (Increasing Federal Employment of Individuals with Disabilities) (July 26, 2010).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to allow the DNFSB to collect and maintain records on applicants for employment, employees, and other individuals who participate in DNFSB programs or activities who request or receive reasonable accommodations or other appropriate modifications from DNFSB for medical or religious reasons; to process, evaluate, and make decisions on individual requests; and to track and report the processing of such requests to comply with applicable requirements in law and policy.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment, current and former DNFSB employees, and other individuals who participate in DNFSB activities, who request and/or receive reasonable accommodations for or other appropriate modifications from DNFSB for medical or religious reasons.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Requester's name and contact information (address(es), telephone number(s), email address(es);

2. Requester's employment status (applicant or employee);

3. Date of request;

4. Employee's position, title, grade, series, step;

5. Information concerning the nature of the requester's medical condition or disability and any medical documentation provided in support of the request;

6. Requester's statement of a sincerely held religious belief and any additional information submitted concerning that belief and the need for an accommodation to exercise that belief;

7. Description of the requested accommodation, how the requested accommodation would assist in job performance, and the sources of technical assistance consulted in effort to identify alternative reasonable accommodation;

8. Whether the request was made orally or in writing;

9. Whether the request for reasonable accommodation was approved, denied, or approved for a trial period, and if denied or approved for a trial period, the reason(s) for such decision;

10. Any reports or evaluations prepared in determining whether to grant or deny the request;

11. Any additional information collected or developed in connection with the request for a reasonable accommodation; and

12. Notification(s) to the employee and his/her supervisor(s) regarding the accommodation.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals who request and/or receive a reasonable accommodation or other appropriate modification from DNFSB, directly or indirectly from an individual's medical provider or another medical professional who evaluates the request, directly or indirectly from an individual's religious or spiritual advisors or institutions and from management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, if it is determined to be relevant and necessary, all or a portion of the records or information contained in this system may be disclosed to authorized entities outside DNFSB as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

1. To federal, state, local, tribal, foreign, or international agencies if the information is relevant and necessary to that agency's decision concerning the hiring or retention of an individual, the issuance of a security clearance, conducting a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license,

grant, or other benefit by such agency, or if the information is relevant and necessary to a DNFSB decision concerning the hiring or retention of an individual, the issuance of a security clearance, conducting a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant, or other benefit concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

2. To a member of Congress or congressional staff in response to an inquiry about an individual from that congressional office made at the request of such individual.

3. To the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

4. To the Department of Justice, including Offices of the U.S. Attorneys; another federal agency conducting litigation or in a proceeding before any court, adjudicative body, or administrative body; another party in litigation before a court, adjudicative body, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

A. DNFSB or any component thereof;

B. Any employee or former employee of DNFSB in his or her official capacity;

C. Any employee or former employee of DNFSB in his or her individual capacity when the Department of Justice or DNFSB has agreed to represent the employee, or

D. The United States, a federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the approval of the DNFSB General Counsel, pursuant to 10 CFR part 1707 or otherwise.

5. To the National Archives and Records Administration (NARA) in connection with records-management inspections being conducted under authority of 44 U.S.C. 2904 and 2906.

6. To physicians or other medical professionals to provide them with or obtain from them the necessary medical documentation and/or certification for reasonable accommodations.

7. To appropriate agencies, entities, and persons when (1) the DNFSB suspects or has confirmed that there has been a breach of the system of records, (2) the DNFSB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DNFSB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DNFSB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. To another federal agency or federal entity, when DNFSB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency, or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

9. To appropriate agencies, entities, and persons when DNFSB: (1) suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) determines that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DNFSB or another agency or entity) that rely upon the compromised information; (3) deems the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DNFSB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and (4) to deter and detect insider threats in accordance with Executive Order 13587.

10. To federal and foreign government intelligence or counterterrorism agencies when DNFSB reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DNFSB reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

11. To non-federal workers such as contractors, grantees, experts, consultants, and the agents thereof, performing or working on a contract, service, grant, cooperative agreement, or other assignment for DNFSB when DNFSB determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DNFSB employees.

12. To another federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation.

13. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in the investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification.

14. To another federal agency, including but not limited to the Equal Employment Opportunity Commission and the Office of Special Counsel, to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

15. To a federal agency or federal entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation.

16. To first aid and safety personnel if the individual's medical condition requires emergency treatment.

17. To another federal agency or oversight body charged with evaluating DNFSB's compliance with the laws, regulations, and policies governing reasonable accommodation requests.

18. To another Federal agency pursuant to a written agreement with DNFSB to provide services (such as medical evaluations), when necessary, in support of reasonable accommodation decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically in an encrypted, password-protected, limited-access folder on DNFSB's local area network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system of records are maintained in accordance with General Records Schedule (GRS) 2.3.020, ''Reasonable Accommodation Case Files.'' They are destroyed three years after an individual's separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are protected from unauthorized access and misuse by a hierarchy of administrative, technical, and physical controls combined with a role-based, need-to-know access control system, that is, one in which access to the records is granted only to those persons who have appropriate clearances or permissions and a demonstrated need to know the information for the performance of their duties.

The records are maintained in a password-protected, encrypted folder on DNFSB's General Support System-Local Area Network (GSS–LAN), the ethernet-based network connecting all of DNFSB's user workstations with the centralized file servers used to store data and host applications. The security controls maintained for the GSS–LAN are in compliance with the Federal Information Systems Modernization Act (Pub. L. 113–283), the relevant policies of the Office of Management and Budget. The records are accessible only to members of a security group established by DNFSB's IT System Administrator. Only the designated owner of the security group is authorized to identify the individuals to be added and removed from the group, and only the IT System Administrator can implement those decisions.

RECORD ACCESS PROCEDURES:

1. *Notification:* An individual who wishes to know whether this system of records contains any information pertaining to himself or herself may file a request for such information in person or in writing. Written requests should be addressed to: Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901. Telephonic requests should be made by calling the Board's switchboard at (202) 208–6400 and asking to speak to the Privacy Act Officer.

2. *Access (copies):* Individuals who wish to obtain copies of records containing their personal information may submit a written request to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901 or by emailing *FOIA@dnfsb.gov.* Such requests must contain:

A. The requester's complete name, address, and telephone number;

B. Proof of identification consisting of a copy of one of the following: valid driver's license, valid passport, or other current identification containing both an address and picture of the requester.

C. The system of records in which the desired information is contained.

3. *Access (in person):* Individuals who wish to view their records in person should call the Privacy Act Officer at (202) 694–7000 (Toll Free (800)-788–4016) at least two weeks before the date on which they would like to visit and be prepared to provide his/her full name, address, telephone number, and the system of records in which the desired information is contained. Thereafter, the Privacy Act Officer will determine if the Board does maintain the requested information, and if the result of that investigation is affirmative, he/she will call the requester to arrange a date and time for the records to be made available. Before being allowed to view the records, the individual seeking access will be required to supply proof of or his/her identity by providing of a copy of a valid driver's license, valid passport, or other current identification that contains both an address and picture of the requester.

CONTESTING RECORD PROCEDURES:

Individuals may submit written requests for correction of a record pertaining to themselves to: Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901. Such letters should clearly identify the corrections desired, and an edited copy of the record will usually be acceptable for that purpose.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

Dated: August 17, 2022.

Joyce Connery,

Chair.

[FR Doc. 2022–18070 Filed 8–19–22; 8:45 am]

BILLING CODE 3670–01–P

DENALI COMMISSION

Denali Commission's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

AGENCY: Denali Commission.

ACTION: Notice.

SUMMARY: Section 70913(a) of the Infrastructure Investment and Jobs Act requires that the head of each Federal agency shall submit to the Office of Management and Budget and to Congress a report that identifies each Federal financial assistance program for infrastructure administered by the Federal agency, and that that report be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Whittington, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1640. Email: *jwhittington@denali.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Infrastructure Investment and Jobs Act (IIJA), signed by President Biden on November 15, 2021, includes the Build America, Buy America Act (BABA), which requires each agency to submit to OMB and Congress a report within 60 days of enactment that lists all Federal financial assistance programs for infrastructure administered by the agency and that identifies the programs that are ''deficient,'' as defined in the Act.

The Act also requires that the agency must:

(1) identify all domestic content procurement preferences applicable to the Federal financial assistance;

(2) assess the applicability of the domestic content procurement preference requirements, including: (A) section 313 of title 23, United States Code; (B) section 5323(j) of title 49, United States Code; (C) section 22905(a) of title 49, United States Code; (D) section 50101 of title 49, United States Code; (E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); (F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4)); (G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3 3914); (H) any domestic content procurement preference included in an appropriations Act; and (I) any other domestic content procurement preference in Federal law (including regulations);

(3) provide details on any applicable domestic content procurement preference requirement, including the

purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and

(4) include a description of the type of infrastructure projects that receive funding under the program, including information relating to: (A) the number of entities that are participating in the program; (B) the amount of Federal funds that are made available for the program for each fiscal year; and (C) any other information the head of the Federal agency determines to be relevant.

Commission Infrastructure Programs: The Commission's program areas are determined annually by the Commissioners for the Denali Commission (''Commissioners'') through the approval on an annual workplan. The current workplan (FY 2022 Workplan) is listed below. These program areas can change from year to year as determined by the Commissioners but all of the funds for these areas could be used for an infrastructure project. Prior to the passage of the IIJA the Commission's Financial Assistance Awards were not subject to a Buy America requirement. Therefore all of the Commission's programs were inconsistent with section 70914. All of the Commission's programs are now compliant with the Buy America requirements.

	Base	TAPL	Total
Energy Reliability and Security:			
Diesel Power Plants and Interties	$2,900,000		$2,900,000
Wind, Hydro, Biomass, Other Proven Renewables and Emerging Technologies	750,000		750,000
Audits, TA, & Community Energy Efficiency Improvements	375,000		375,000
RPSU Maintenance and Improvement Projects	900,000		900,000
Subtotal	4,925,000		4,925,000
Bulk Fuel Safety and Security:			
New/Refurbished Facilities		1,500,000	1,500,000
Maintenance and Improvement Projects		700,000	700,000
Subtotal	0	2,200,000	2,200,000
Village Infrastructure Protection	500,000		500,000
Transportation	1,000,000		1,000,000
Sanitation:			
Village Water, Wastewater and Solid Waste	1,500,000		1,500,000
Subtotal	1,500,000		1,500,000
Health Facilities	750,000		750,000
Housing	500,000		500,000
Broadband	750,000		750,000
Workforce Development:			
Energy and Bulk Fuel	375,000	600,000	975,000
Other	700,000		700,000
Subtotal	1,075,000	600,000	1,675,000
Totals	11,000,000	2,800,000	13,800,000

Domestic Content Procurement Preferences: The Commission has reviewed all other domestic content procurement preferences and determined they do not apply to the Commission.

John Whittington,

General Counsel.

[FR Doc. 2022–17988 Filed 8–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0083]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins Loan Program Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is

soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: Federal Perkins Loan Program Regulations.

OMB Control Number: 1845–0023.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households; State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 8,217,172.

Total Estimated Number of Annual Burden Hours: 149,369.

Abstract: The requirements of these regulations is necessary to monitor a school's due diligence in its contact with the Perkins loan borrower regarding repayment, billing and collections, reimbursement to its Perkins loan revolving fund, rehabilitation of defaulted loans as well as institutions use of third party collections. There has been no change to the regulations. This is a request for an extension without change of the currently approved reporting and record-keeping requirements contained in the regulations related to the administrative requirements of the Perkins Loan Program. Due to the effects of the COVID–19 pandemic the Department lacks sufficient data to allow for more accurate updates to the burden estimates.

Dated: August 17, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–18023 Filed 8–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0077]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Public Education Financial Survey (NPEFS) 2022–2024

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: National Public Education Financial Survey (NPEFS) 2022–2024.

OMB Control Number: 1850–0067.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 7,327.

Abstract: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data that has been included in the National Center for Education Statistics (NCES) Common Core of Data (CCD) since FY 1982 (school year 1981–82). NPEFS provides function expenditures by salaries, benefits, purchased services, and supplies, and includes federal, state, and local revenues by source. The NPEFS collection includes data on all state-run schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, certain formula grant programs (*e.g.* Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, in addition to using the SPPE data as general information on the financing of elementary and secondary education, the U.S. Department of Education Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, title I, part A, of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Education for Homeless Children and Youth program under title VII of the McKinney-Vento Homeless Assistance Act, and the Student Support and Academic Enrichment Grants under title IV, part A of the ESEA make use of SPPE data indirectly because their

formulas are based, in whole or in part, on State title I, part A, allocations.

NCES's request to conduct the annual collection of state-level finance data for FY 2019–2021 was approved by the Office of Management and Budget (OMB) in August 2019 (OMB #1850–0067 v.17), and subsequent submissions (OMB #1850–0067 v.18–22) addressed changes driven by the global coronavirus pandemic as well as normal changes to include updated contact materials and **Federal Register** Notices. In this package NCES requests approval of the collection of National Public Education Financial Survey (NPEFS) data covering fiscal years 2022 through 2024 (corresponding to school years 2021/22 through 2023/24), that will be carried out in 2023 through 2025.

This NPEFS FY 2022–2024 request involves changes to the last approved NPEFS data collection instrument (Appendix B.1) to: (1) add new items to gather data on expenditures for specific sources of coronavirus (COVID–19) federal assistance funds; (2) remove items from the survey which ask for Title V, Part A expenditures; and (3) update headers to make the formatting more consistent for use in the NPEFS web application. This request also includes minor revisions to the Fiscal Data Plan (Appendix B.2) to provide definitions and clarify the questions related to the impact of COVID–19 on average daily attendance. Furthermore, we have updated the NPEFS reporting instructions (Appendix B.3) to add definitions for the new data items in Section 8 and remove the data items for Title V, Part A.

Dated: August 16, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–17942 Filed 8–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0085]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FY 2022 Child Care Access Means Parents in School Annual Performance Report Package 84.335A

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement without change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Harold Wells, 202–453–6131.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: FY 2022 Child Care Access Means Parents in School Annual.

Performance Report Package 84.335A.

OMB Control Number: 1840–0763.

Type of Review: A reinstatement without change of a previously approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 9,800.

Abstract: The Child Care Access Means Parents In School (CCAMPIS) annual performance reports are used to collect programmatic data for purposes of annual reporting; budget submissions to OMB; Congressional hearings and testimonials; Congressional inquiries; and responding to inquiries from higher education interest groups and the general public.

Dated: August 16, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–17939 Filed 8–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0074]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; DC School Choice Incentive Program

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection

request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Yeh, 202–205–5798.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: DC School Choice Incentive Program.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 3,000.

Total Estimated Number of Annual Burden Hours: 1,000.

Abstract: The DC Opportunity Scholarship Program, authorized by the Consolidated Appropriations Act of 2004, and reauthorized in 2017 by the Scholarships for Opportunity and Results (SOAR) Reauthorization Act, awarded a grant to Serving Our Children in order to administer scholarships to students who reside in the District of Columbia and come from households whose incomes do not exceed 185% of the poverty line. To assist in the student selection and assignment process, the information collected is used to determine the eligibility of those students who are interested in the available scholarships. Also, since the authorizing statute requires an evaluation, we are proposing to collect certain family demographic information because they are important predictors of school success. Finally, we are asking to collect information about parental participation and satisfaction because these are key topics that the statute requires the evaluation to address. This request makes two small changes to the questions previously approved by OMB. One is to add a question about how the families heard of Opportunity Scholarship Program (OSP). The other is to add a check box in section 9 (relating to students with disabilities) pursuant to the competitive grant application instructions. Previously this information collection was approved under OMB #1855–0015. This program and the associated collection were moved to the Office of Elementary and Secondary Education within the Department. As such, it requires a new OMB number that corresponds with the OMB numbers for collections from the Office of Elementary and Secondary Education. For that reason, we are requesting a new information collection and will discontinue 1855–0015 when this request is approved.

Dated: August 17, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–18027 Filed 8–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Bonneville Power Administration, Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE), Bonneville Power Administration (BPA), has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year approval of its collection, titled Bonneville Power Administration (BPA) Customer Request Services, OMB Control Number 1910–NEW. The proposed collection, Customer Request Services, will be used to allow customers to make requests, specifically for power interruption or to upgrade wireless sites collocated on BPA facilities. This information is used to manage these types of requests.

DATES: Comments regarding this proposed information collection must be received on or before September 21, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments may be sent to Bonneville Power Administration, Attn: Stephanie Noell, Privacy Program, CGI–7, P.O. Box 3621, Portland, OR 97208–3621, or by email at *privacy@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Attn: Stephanie Noell, Privacy Program, by email at *privacy@bpa.gov,* or by phone at (503) 230–3881.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–NEW; (2) *Information Collection Request Title:* Customer Request Services; (3) *Type of Request:* New; (4) *Purpose:* This information collection will be used to allow customers to make requests, specifically for power interruption or to upgrade wireless sites collocated on BPA facilities: BPA F 6500.15e—Transmission Operator Provider (TOP) Outage Request—Customers/USBR/COE, BPA F 6530.16e—Application for a Wireless Site Upgrade Co-Located on BPA Facilities; (5) *Estimated Number of Respondents:* 131; (6) *Total Annual Responses:* 6,325; (7) *Annual Estimated Number of Burden Hours:* 1,113; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: The Bonneville Project Act of 1937, 16 U.S.C. ch. 12B; 16 U.S.C. 832a(b); and the Federal Columbia River Transmission System Act of 1974, 16 U.S.C. ch. 12G; 16 U.S.C 838b.

Signing Authority: This document of the Department of Energy was signed on August 15, 2022, by Candice D. Palen, Information Collection Clearance Manager, Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

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

Treena V. Garrett,

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

[FR Doc. 2022–18025 Filed 8–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2178–001.
Applicants: ORNI 50 LLC.
Description: Tariff Amendment: Amendment to be effective 6/24/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5027.
Comment Date: 5 p.m. ET 8/30/22.

Docket Numbers: ER22–2187–000; ER22–2188–000.
Applicants: Northwest Ohio IA, LLC, Northwest Ohio Solar, LLC.
Description: Supplement to June 24, 2022 Northwest Ohio Solar, LLC, et al. tariff filing.
Filed Date: 8/12/22.
Accession Number: 20220812–5237.
Comment Date: 5 p.m. ET 9/2/22.

Docket Numbers: ER22–2246–000.
Applicants: BCE Los Alamitos, LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 8/16/22.
Accession Number: 20220816–5061.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2337–000.
Applicants: New Hampshire Industries, Inc.
Description: Notice of Cancellation of Market Based Rate Tariff of New Hampshire Industries, Inc.
Filed Date: 7/7/22.
Accession Number: 20220707–5224.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2646–001.
Applicants: Graphite Solar 1, LLC.
Description: Notice of Non-Material Change in Status of Graphite Solar I, LLC.
Filed Date: 8/16/22.
Accession Number: 20220816–5110.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2663–000.
Applicants: Aron Energy Prepay 15 LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 10/15/2022.
Filed Date: 8/15/22.
Accession Number: 20220815–5168.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2664–000.
Applicants: Aron Energy Prepay 16 LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 10/15/2022.
Filed Date: 8/15/22.
Accession Number: 20220815–5170.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2665–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6021; Queue No. AG1–064 to be effective 8/23/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5011.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2666–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement No. 101 to be effective 7/19/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5079.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2667–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Capital Budget Quarterly Filing for Second Quarter of 2022.
Filed Date: 8/11/22.
Accession Number: 20220811–5164.
Comment Date: 5 p.m. ET 9/1/22.

Docket Numbers: ER22–2668–000.
Applicants: Wisconsin Electric Power Company.
Description: § 205(d) Rate Filing: Formula Rate Update Filing for 2021 Rate Year to be effective 10/16/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5090.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2669–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised No. 3518 NITSA among PJM and LGE/KU to be effective 6/1/2023.
Filed Date: 8/16/22.
Accession Number: 20220816–5104.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2670–000.
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: Blackbriar Farm LGIA Filing to be effective 8/8/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5105.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2671–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: SR Ailey Affected System Construction Agreement Filing to be effective 8/2/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5117.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: ER22–2672–000.
Applicants: American Municipal Power, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Municipal Power, Inc. submits tariff filing per 35.13(a)(2)(iii: Second Revised Service Agreement No. 4264—NITSA among PJM and AMP to be effective 8/3/2022.
Filed Date: 8/16/22.
Accession Number: 20220816–5124.
Comment Date: 5 p.m. ET 9/6/22.

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: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18043 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–494–000]

Boardwalk Storage Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on August 5, 2022, Boardwalk Storage Company, LLC (Boardwalk Storage), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046 filed in the above referenced docket an application pursuant to section 7(b), 7(c) and 7(e) of the Natural Gas Act and Part 157 of the Commission's regulations requesting abandon by replacement of the existing inoperable electric-driven 10,000 horsepower (HP) compressor designated (Unit 1) and certain auxiliary equipment with an electric- driven 9,000 horsepower (HP) compressor designated (Unit 3) and certain auxiliary equipment all located in Iberville Parish, Louisiana. Boardwalk Storage does not propose the abandonment of service to any customers as result of the in the replacement. All as more fully set forth in the application which is on file with the Commission and open for the public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Juan Eligio Jr., Vice President, Regulatory Affairs, Boardwalk Storage Company, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; by phone (713) 479–3480; or by email: *juan.eligio@bwpipelines.com*.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on September 6, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is September 6, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which September 6, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

and properly recorded, please submit your comments on or before September 6, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding to become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–494–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–494–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Juan Eligio Jr., Vice President, Regulatory Affairs, Boardwalk Storage Company, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; or by email: *juan.eligio@bwpipelines.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.f*erc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18066 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2663–000]

Aron Energy Prepay 15 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Aron Energy Prepay 15 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 6, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18040 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2664–000]

Aron Energy Prepay 16 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Aron

Energy Prepay 16 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 6, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18047 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2662–000]

Aron Energy Prepay 14 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Aron Energy Prepay 14 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 6, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18041 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited

communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Prohibited

Docket Nos.	File date	Presenter or requester
Exempt:		
None.		
1. CP16–10–000, CP21–57–000, CP19–477–000	08–03–2022	West Virginia Governor Jim Justice.

Dated: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18046 Filed 8–19–22; 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: RP22–1122–000.

Applicants: Leucrotta Exploration Inc., Coelacanth Energy Inc.

Description: Joint Petition for Temporary Limited Waiver of Capacity Release Regulations, et al. of Leucrotta Exploration Inc., et al.

Filed Date: 8/11/22.

Accession Number: 20220811–5156.

Comment Date: 5 p.m. ET 8/23/22.

Docket Numbers: RP22–1123–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Update Electric Portion of GT&C Section 27 to be effective 9/12/2022.

Filed Date: 8/12/22.

Accession Number: 20220812–5033.

Comment Date: 5 p.m. ET 8/24/22.

Docket Numbers: RP22–1124–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Shell Aug 22) to be effective 8/15/2022.

Filed Date: 8/12/22.

Accession Number: 20220812–5057.

Comment Date: 5 p.m. ET 8/24/22.

Docket Numbers: RP22–1125–000.

Applicants: Enable Gas Transmission, LLC.

Description: Compliance filing: Baseline Tenth Revised Volume No. 1 to be effective 9/15/2022.

Filed Date: 8/15/22.

Accession Number: 20220815–5027.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1126–000.

Applicants: Enable Gas Transmission, LLC.

Description: Compliance filing: Third Revised Volume Filed Agreements to be effective 9/15/2022.

Filed Date: 8/15/22.

Accession Number: 20220815–5028.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1127–000.

Applicants: Enable Gas Transmission, LLC.

Description: Tariff Amendment: Cancellation of Ninth Revised Volume No. 1 Tariff to be effective 9/15/2022.

Filed Date: 8/15/22.

Accession Number: 20220815–5047.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1128–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Koch) to be effective 8/16/2022.

Filed Date: 8/15/22.

Accession Number: 20220815–5153.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: RP22–1129–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: § 4(d) Rate Filing: August 2022 Clean-up Filing to be effective 9/16/2022.

Filed Date: 8/16/22.

Accession Number: 20220816–5015.

Comment Date: 5 p.m. ET 8/29/22.

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: August 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18042 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Center Rivers Power, NH LLC	Project No. 2287–053.
Center Rivers Power, NH LLC	Project No. 2288–057.

Great Lakes Hydro America, LLC	Project No. 2300–052.
Great Lakes Hydro America, LLC	Project No. 2311–067.
Great Lakes Hydro America, LLC	Project No. 2326–054.
Great Lakes Hydro America, LLC	Project No. 2327–047.
Great Lakes Hydro America, LLC	Project No. 2422–058.
Great Lakes Hydro America, LLC	Project No. 2423–031.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major Licenses.

b. *Project No.:* 2287–053, 2288–057, 2300–052, 2311–067, 2326–054, 2327–047, 2422–058, 2423–031.

c. *Dates Filed:* July 28 and August 1, 2022.

d. *Applicants:* Center Rivers Power, NH LLC and Great Lakes Hydro America, LLC.

e. *Name of Projects:* J. Brodie Smith, Gorham, Shelburne, Upper Gorham, Cross Power, Cascade, Sawmill, and Riverside Hydroelectric Projects.

f. *Location:* On the Androscoggin River, in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Curtis R. Mooney, Project Manager, Central Rivers Power NH, LLC, 59 Ayers Island Road, Bristol, New Hampshire 03222, (603) 744–0846.

Mr. Luke Anderson, Great Lakes Hydro America, LLC, Brookfield Renewable, 150 Main St., Lewiston, Maine, 04240, (207) 755–5613, *luke.anderson@brookfieldrenewable.com.*

i. *FERC Contact:* Ryan Hansen at (202) 502–8074 or email at *ryan.hansen@ferc.gov.*

j. The applications are not ready for environmental analysis at this time.

k. *Project Descriptions:*

Sawmill: The existing Sawmill Hydroelectric Project consists of: (1) an approximately 720-foot-long concrete dam with a maximum height of 15 feet that includes: (a) a 169-foot-long spillway section with a crest elevation of 1094.1 feet USGS; (b) a 134-foot-long, 22-foot-wide wastegate section, topped with five 18-foot-wide,13-foot-high wooden gates; (c) a 99.4-foot-long, 2-foot-high spillway section with a crest elevation of 1094.2 feet; (d) a 145-foot-long, 11-foot-high spillway section topped with permanent 21-inch-high steel flashboards and a crest elevation of 1093.2 feet; (e) a 36-foot-long, 2-foot-high spillway section with crest elevation of 1094.2 feet; and (f) a 137-foot-long spillway section topped with hinged 7.5-foot-high flashboards and a crest elevation of 1087.0 feet; (2) an impoundment with a surface area of 72.5 acres at a normal full pond elevation of 1094.5 feet; (3) a headwork structure including four 9.5-foot-wide, 12-foot-high steel wheeled gates conveying flow from the impoundment to the powerhouse; (4) a 115-foot-long, 65-foot-wide, 27-foot-high powerhouse integral to the western side of the dam containing four turbines and generators with a total installed capacity of 3.2 MW; (5) a 120-foot-long tailrace at an elevation of 1077.3 feet conveying flow from the powerhouse back to the Androscoggin River; (6) a substation located approximately 25 feet west of the powerhouse; (7) an 1,800-foot-long, 22-kilovolt (kV) transmission line connecting the substation to the regional grid; and (8) appurtenant facilities. The project creates an approximately 550-foot-long bypassed reach of the Androscoggin River.

Riverside: The existing Riverside Hydroelectric Project consists of: (1) an approximately 846-foot-long, 21-foot-high rock-filled timber and concrete dam that includes: (a) a 660-foot-long spillway consisting of a 248-foot-long concrete gravity section with 30-inch-high flashboards and a crest elevation of 1076.8 feet; (b) a 235-foot-long concrete gravity section with a maximum height of 20 feet and a crest elevation of 1076.6 feet; (c) a 177-foot-long timber crib section with 29-inch-high flashboards and a crest elevation of 1076.9 feet; and (d) an integral 91-foot-long, 33-foot-wide, 54-foot-high gatehouse; (2) an impoundment with a surface area of 7 acres at a normal full pond elevation of 1076.8 feet; (3) two 9-foot-high, 16-foot-wide headgates with trashracks with 2.5 inch spacing; (4) two 1,400-foot-long, 11-foot-diameter steel penstocks; (5) a 104-foot-long, 51-foot-wide, 80-foot-tall concrete and brick powerhouse containing two vertical Francis turbines and accompanying generators rated at 3.8 and 4.1 MW for a total installed capacity of 7.9 MW; (6) a 40-foot-long tailrace; (7) a 400-foot-long, 22-kV transmission line transmitting power from the powerhouse to the regional grid; and (8) appurtenant facilities. The project creates an approximately 2,350-foot-long bypassed reach of the Androscoggin River.

J. Brodie Smith: The existing J. Brodie Smith Hydroelectric Project consists of: (1) a 500-foot-long masonry and concrete U-shaped gravity dam with a maximum height of 24 feet that includes: (a) a 170-foot-long spillway with a crest elevation of 1003 feet and topped with 6.7-foot-high hinged steel flashboards and two 17-foot-high, 25-foot-wide steel roller-type sluice gates with a sill elevation of 993 feet; (b) a 256-foot-long spillway with a crest elevation of 1006.7 feet and topped with 3-foot-high pin supported wooden flashboards; and (c) two waste gates located immediately to the west of an opening in the flashboards; (2) an impoundment with a surface area of 8 acres at a normal headwater elevation of 1009.7 feet; (3) an intake structure consisting of a 500-foot-long by 100-foot-wide power canal fitted with trashracks; (4) a 1,440-foot-long, 18-foot-diameter steel penstock; (5) a 1.15 million gallon steel surge tank; (6) a 65-foot-long, 53-foot-wide powerhouse containing one generating unit with a rated capacity of 15 MW; (7) a 400-foot-long tailrace; (8) a 1,500-foot-long, 115-kV transmission line conveying power from the powerhouse to the regional grid; and (9) appurtenant facilities. The project creates an approximately 0.5-mile-long bypassed reach of the Androscoggin River.

Cross Power: The existing Cross Power Hydroelectric Project consists of: (1) an approximately 467-foot-long concrete and rock fill dam that includes: (a) two concrete non-overflow sections, separated by an outcropping ledge; (b) a stoplog opening; (c) a 276-foot-long, 25-foot-high spillway with a crest elevation that ranges from 918.2 feet to 921.7 feet and topped with 42-inch-high flashboards; (d) a 19-foot-wide, 124-foot-long gatehouse equipped with a 21.6-feet-wide, 18.4-feet-high trashrack in each bay; and (e) a concrete retaining wall; (2) an impoundment with a surface area of 22 acres at a normal full pond elevation of 921.7 feet USGS; (3) an original 47-foot-wide, 146-foot-long concrete and brick powerhouse with a 47-foot-wide, 50-foot-long addition on the downstream shore side that contains five propeller turbines and five horizontal generators with a combined installed capacity of 3.22 MW; (4) a 50-foot-long tailrace; (5) a 20-foot-long transmission line transmitting power from the powerhouse to a 3,750 kVA transformer located adjacent to the eastern side of the powerhouse; and (6) appurtenant facilities.

Cascade: The existing Cascade Hydroelectric Project consists of: (1) a 583-foot-long concrete gravity dam with a maximum height of 53 feet consisting of: (a) a 313-foot-long spillway section with a crest elevation of 898.4 feet fitted with 3-foot-high flashboards for a total elevation of 901.4 feet; and (b) three non-overflow abutment sections located between the spillway and forebay gate structure on each side of the dam; (2) an impoundment with a surface area of 28 acres at a normal full pond elevation of 901.4 feet; (3) an approximately 168-foot long and 15-foot-wide forebay gate structure with fourteen 9-foot-wide, 11-foot-high wooden forebay gates; (4) a 300-foot-long and 240-foot-wide forebay with a normal water surface elevation of 901.2 feet; (5) a 4-foot-wide, 2-inch-long, 6-inch-high sluiceway; (6) a 135-foot-long, 43-foot-wide, 67-foot-high powerhouse with a 41-foot-long, 16-foot-wide addition containing three Francis turbines and three generators with a combined installed capacity of 7.92 MW; (7) a 40-foot-long tailrace; (8) a 430-foot-long, 22-kV transmission line transmitting power from the powerhouse to the regional grid; and (9) appurtenant facilities. The project creates an approximately 350-foot-long bypassed reach of the Androscoggin River.

Upper Gorham: The existing Upper Gorham Hydroelectric Project consists of: (1) a 775-foot-long timber crib and earthen dam that includes: (a) a western 133-foot-long, earthen dike with concrete core wall and a crest elevation of 820.0 feet USGS; (b) a 300-foot-long, 18-foot-high rock-filled timber crib spillway section with 5-foot-high flashboards; (c) a 122-foot-long headgate section that regulates flow into the power canal; (d) a 113-foot-long by 16-foot-wide gatehouse integral with dam; (e) an eastern 220-foot-long earthen dike with concrete core wall; and (f) a headgate section containing ten 7.5-foot-wide stoplog gates fitted with trashracks; (2) an impoundment that is approximately 45 acres at a normal full pond elevation of 812.3 feet USGS; (3) a 3,350-foot-long, 220-foot-wide, 18-foot-deep excavated earthen power canal with riprap lining; (4) a 126-foot-long by 18-foot-wide gatehouse with 14 operable gates and trashracks with 3-inch clear spacing; (5) a 127-foot-long, 74-foot-wide, 26-foot-high powerhouse containing four horizontal shaft Francis turbines and four generators with a total installed capacity of 4.8 MW; (6) a 370-foot-long tailrace; (7) a 22-kV, 50-foot-long transmission line transmits power from the powerhouse to three 2500 kVA transformers sitting on a 46-foot long by 20-foot-wide transformer pad; and (8) appurtenant facilities. The project creates an approximately 1-mile-long bypassed reach of the Androscoggin River.

Gorham: The existing Gorham Hydroelectric Project consists of: (1) a 417-foot-long, 20-foot-high timber crib, L-shaped dam that includes: (a) a 90-foot-long spillway topped with a 12-inch-long, 12-inch-wide wooden flashboard with a crest elevation of 772.2 feet (b) a 252-foot-long spillway topped with 5.4-foot-high hinged wooden flashboards; (c) a 15-foot-wide sluice gate; and (d) a 75-foot-long reinforced concrete sluiceway topped with 5.33 foot-high hinged wooden flashboards; (2) an impoundment with a surface area of 32 acres; (3) a 415-foot-long, 60-foot-wide, 20-foot-deep earthen power canal conveying flow from the impoundment to the powerhouse; (4) a 37.8-foot-long, 27.1-foot-wide powerhouse containing two vertical Francis turbines and two generators with a total installed capacity of 2.15 MW; (5) an 850-foot-long tailrace; (6) a 200-foot-long, 33-kV transmission line that transmits power from the powerhouse to a nearby substation; and (6) appurtenant facilities. The project creates an approximately 850-foot-long bypassed reach of the Androscoggin River

Shelburne: The existing Shelburne Hydroelectric Project consists of: (1) a 51-foot-long concrete gravity dam that includes: (a) a 70-foot-long, 3-foot-wide concrete retaining wall along the northern shore of the Androscoggin River; (b) a 171-foot-long gated spillway section comprised of an 83-foot-long section with 9-foot-high hinged steel and wood flashboards; (c) an 88-foot-long section containing three 25-foot-long, 10-foot-high wastegates separated by 5-foot-wide concrete piers; and (d) a 27-foot-wide sluiceway; (2) an impoundment with a surface area of approximately 250 acres at the normal full pond elevation of 734.2 feet; (3) 259 feet of dikes along the south shore of the impoundment; (4) a 17-foot-long by 14-foot-wide gate controller building located on the island adjacent to the sluiceway housing; (5) a 15-foot-long by 112-foot-high intake conveying flow from the impoundment to the powerhouse fitted with a steel bar trashrack with 3-inch clear spacing (6) a 110-foot-long, 48.6-foot-wide powerhouse integral with the dam containing three turbines and generators a total installed capacity of 3.72 MW; (7) a 130-foot-long tailrace; (8) a 5.5-mile-long, 22-kV transmission line conveying power from the powerhouse to the regional grid; and (9) appurtenant facilities.

l. *Location of the Applications:* In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–5679). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	September 2022.
Issue Additional Information Request (if necessary)	October 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	December 2022.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	February 2023.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18067 Filed 8–19–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0116; FRL–9412–16–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for May, June, and July 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from May 1, 2022 to July 31, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0116, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667; email address: *edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Under TSCA, the unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- J–22–0012, J–22–0013, Genetically modified microorganism for the production of a chemical substance (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding

made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: August 15, 2022.

Madison Le,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–18011 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0160; FRL–9409–04–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients—July 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 21, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the *EPA File Symbol or the EPA Registration Number* of interest as shown in the body of this document, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Each application summary in Unit II specifies a contact division. The appropriate division contacts are identified as follows:

- BPPD (Biopesticides and Pollution Prevention Division) (Mail Code 7511M); Charles Smith; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*
- RD (Registration Division) (Mail Code 7505T); Marietta Echeverria; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), and 40 CFR 152.102, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

New Active Ingredients

File Symbols: 11603–AG, 66222–EOI, and 66222–EOT. *Docket ID number:* EPA–HQ–OPP–2022–0575. *Applicant:* ADAMA AGAN c/o Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Blvd., Suite 100 Raleigh, NC 27604. *Product name:* Metamitron Technical, ADA 46701 SC, and ADA 46343 SG. *Active ingredient:* herbicide—metamitron at 98.66%, 14.41%, and 15%, respectively. *Proposed use:* Pome Fruit (Crop Group 11–10). *Contact:* RD.

File Symbol: 52991–UU. *Docket ID number:* EPA–HQ–OPP–2022–0659. *Applicant:* Bedoukian Research, Inc., 6 Commerce Drive, Danbury, CT 06810. *Product name:* Bedoukian Tuta Absoluta Technical Pheromone. *Active ingredients:* Insecticide—(e,z,z)-3,8,11-Tetradecatrienyl acetate at 76.50% and (e,z)-3,8-Tetradecadienyl acetate at 9.30%. *Proposed use:* For use to manufacture end-use products intended to control the tomato leaf miner (*Tuta absoluta*). *Contact:* BPPD.

Dated: August 10, 2022.

Brian Bordelon,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–18021 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10131–01–R9]

Revision of Approved State Primacy Program for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the State of Hawaii revised its approved

State primacy program under the federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the federal Phase II/V Chemical Contaminant Rules (Phase II/V) and the Arsenic Rule. The Environmental Protection Agency (EPA) has determined that Hawaii's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Hawaii are no less stringent than the corresponding federal regulations. Therefore, EPA approves this revision to Hawaii's approved State primacy program. However, this determination on Hawaii's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

DATES: A request for a public hearing must be received or postmarked September 21, 2022.

ADDRESSES: Documents relating to this determination that were submitted by Hawaii as part of its program revision request are available for public inspection online at *https://health.hawaii.gov/sdwb/public-notices/.* In addition, these documents are available between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except official State holidays, at the following address: Hawaii Department of Health, Safe Drinking Water Branch, 2385 Waimano Home Road, Uluakupu Building 4, Pearl City, Hawaii 96782. If there are issues accessing the website, please contact the Safe Drinking Water Branch, at (808) 586–4258, or via email at *sdwb@doh.hawaii.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Yen, EPA Region 9, Drinking Water Section; via telephone at (415) 972–3976 or via email address at *yen.anna@epa.gov*

SUPPLEMENTARY INFORMATION:

Background. EPA approved Hawaii's initial application for primary enforcement authority (''primacy'') of drinking water systems on October 20, 1977 (42 FR 47244). Since initial primacy approval, EPA has approved various revisions to Hawaii's primacy program. For the revision covered by this action, EPA promulgated the Chemical Contaminant Rules, collectively referred to as the Phase II/V Rules, and the Arsenic Rule at 40 CFR Subparts B, C, and G. EPA promulgated the Phase II/V Rules in multiple phases, with Phase V promulgated on July 17, 1992 (57 FR 31776), and EPA promulgated the Arsenic Rule on January 22, 2001 (66 FR 6976). Under the Phase II/V Rules, EPA regulates over 65 inorganic contaminants, volatile organic contaminants, and synthetic organic contaminants. Under the Arsenic Rule, EPA updated the maximum contaminant level for arsenic to better protect public health. EPA has determined that the Phase II/V and Arsenic Rule requirements were adopted into the Hawaii Administrative Rules in a manner that Hawaii's regulations are comparable to and no less stringent than the federal requirements. EPA has also determined that the State's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements demonstrating the corresponding State authorities, additional materials to support special primacy requirements of 40 CFR 142.16, a review of the requirements contained in 40 CFR 142.10 necessary for States to attain and retain primary enforcement responsibility, and a statement by the Hawaii Attorney General certifying that Hawaii's laws and regulations to carry out the program revision were duly adopted and are enforceable. The Attorney General's statement also affirms that there are no environmental audit privilege and immunity laws that would impact Hawaii's ability to implement or enforce the Hawaii laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of Hawaii's approved State primacy program. The Technical Support Document, which provides EPA's analysis of Hawaii's program revision request, is available by submitting a request to the following email address: *R9dw-program@epa.gov.* Please note ''Technical Support Document'' in the subject line of the email.

Public Process. Any interested person may request a public hearing on this determination. A request for a public hearing must be received or postmarked before September 21, 2022 and addressed to the Regional Administrator of EPA Region 9, via the following email address: *R9dw-program@epa.gov,* or by contacting the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note ''State Program Revision Determination'' in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on their own motion, EPA's approval shall become final and effective on September 21, 2022, and no further public notice will be issued.

Authority:

Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g-2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 10, 2022.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2022–17933 Filed 8–19–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND DATE: Thursday, September 1, 2022 at 9:30 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation for Item Numbers 1 and 2.

MATTERS TO BE CONSIDERED:

1. Appointment of EXIM Advisory Committee for 2022–23
2. Appointment of EXIM Sub-Saharan Africa Advisory Committee for 2022–23

CONTACT PERSON FOR MORE INFORMATION: Joyce B. Stone (202–257–4086). Members of the public who wish to attend the meeting via teleconference should register via using the link below: *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,pHLqbjVTrkuy_9KepKN6dQ,MFtnLzltSEGI6EQECdI5iQ,xonF-*

XEBlE62i4GX3SaLOA,pFuQn 7W56UyeCp_ZdJp_6w,rBqKXoa-E0qEpQWdfk4EGg?mode=read& tenantId=b953013c-c791-4d32-996f-518390854527 by noon Wednesday, August 30, 2021. Individuals will be directed to a Webinar registration page and provided call-in information.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–18133 Filed 8–18–22; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0026; –0070; –0079; –0188]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0026, –0070, –0079, and –0188).

DATES: Comments must be submitted on or before October 21, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION, CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

1. *Title:* Transfer Agent Registration and Amendment Form.

OMB Number: 3064–0026.

Form Number: TA–1.

Affected Public: Private Sector, insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0026]

Information collection description (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Transfer Agent Registration 12 CFR 341.3 (Mandatory).	Reporting (Occasional)	1	1	01:15	1
2. Transfer Agent Amendment 12 CFR 341.4 (Mandatory).	Reporting (Occasional)	1	1	00:10	0
3. Transfer Agent Deregistration 12 CFR 341.5 (Mandatory).	Reporting (Occasional)	1	1	00:25	0
Total Annual Burden (Hours)					1

General Description of Collection: Section 17A(c) of the Security Exchange Act of 1934 (the Act) requires all transfer agents for securities registered under section 12 of the Act or, if the security would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G), to ''fil[e] with the appropriate regulatory agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' In general, an entity performing transfer agent functions for a security is required to register with its appropriate regulatory agency (ARA) if the security is registered on a national securities exchange or if the issuer of the security has total assets exceeding $10 million and a class of equity security held of record by 2,000 persons or, for an issuer that is not a bank, BHC, or SLHC, by 500 persons who are not accredited investors. The Federal Reserve Board of Governors' (Board) Regulation H (12 CFR 208.31(a)) and Regulation Y (12 CFR 225.4(d)), the OCC's 12 CFR 9.20, and the FDIC's 12 CFR part 341 implement these provisions of the Act. To accomplish the registration of transfer agents, Form TA–1 was developed in 1975 as an interagency effort by the Securities and Exchange Commission (SEC) and the agencies. The agencies primarily use the data collected on Form TA–1 to determine whether an application for registration should be approved, denied, accelerated or postponed, and they use the data in connection with their supervisory responsibilities. FDIC is revising this information collection to include the burden associated with the reporting requirement related to the transfer agent deregistration form (Form TA–W) currently cleared under OMB Control Number 3064–0027. The intention is to create a combined ICR that covers both the transfer agent registration and amendment form, and the transfer agent deregistration form. This combined ICR will retain the Office of Management and Budget (OMB) number OMB No. 3064–0026. The FDIC plans to discontinue OMB No. 3064–0027 once the combined OMB No. 3064–0026 is approved. This action will streamline the ICR process and contribute to enhanced operational efficiency of the FDIC.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the decline in the estimated overall

annual time burden from 2 hours in 2020 and 2021 to 1 hour in 2022.

2. *Title:* Application for a Bank to Establish a Branch or Move its Main Office or Branch.

OMB Number: 3064–0070.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0070]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Application for consent to reduce or retire capital.	Reporting (Mandatory).	On Occasion	436	1.461	5	3,185
Estimated Total Annual Burden.	.....	.....	.....	.....	.....	3,185

General Description of Collection: Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d) (FDI Act) provides that no FDIC insured state nonmember bank or state savings association shall establish and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC. In granting or withholding consent to the applicant, FDIC considers: (a) The financial history and condition of the depository institution; (b) the adequacy of its capital structure; (c) its future earnings prospects; (d) the general character and fitness of its management; (e) the risk presented by the depository institution to the Deposit Insurance Fund; (f) the convenience and needs of the community to be served; and (g) whether its corporate powers are consistent with the purposes of the FDI Act. FDIC regulations found at 12 CFR 303, subpart C, specify the steps that respondents must take to comply with the statutory mandate.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

3. *Title:* Application for Consent to Reduce or Retire Capital.

OMB Number: 3064–0079.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0079]

Information collection (IC) description	Type of burden (obligation to respond)	Estimated number of respondents	Number of responses per respondent	Estimated time per response (hours)	Total estimated annual burden (hours)
Application for consent to reduce or retire capital.	Reporting (Required to Obtain or Retain a Benefit).	74	1.36	11	1,107
Estimated Total Annual Burden	.....	.....	.....	.....	1,107

General Description of Collection: Insured state nonmember banks proposing to change their capital structure must submit an application containing information about the proposed change to obtain FDIC's consent to reduce or retire capital.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

4. *Title:* Appraisals for Higher-Priced Mortgage Loans.

OMB Number: 3064–0188.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

ESTIMATED NUMBER OF RESPONDENTS AND RESPONSES PER RESPONDENT

Item	IC description (section)	Type of burden (frequency of response)	Obligation to respond	Estimated annual number of respondents	Estimated annual number of responses per respondent	Estimated time per response	Estimated annual burden hours
1	Disclose to an applicant for an HPML that the institution may obtain an appraisal for the property, 12 CFR part 1026.35(c)(5)(i).	Third-party Disclosure (On Occasion).	Mandatory	3,018	14.54	0.017	746
2	Provide a copy of written appraisal to the consumer, 12 CFR part 1026.35(c)(6)(i).	Third-party Disclosure (On Occasion).	Mandatory	3,018	15.34	0.14	6,481

ESTIMATED NUMBER OF RESPONDENTS AND RESPONSES PER RESPONDENT—CONTINUED

Item	IC description (section)	Type of burden (frequency of response)	Obligation to respond	Estimated annual number of respondents	Estimated annual number of responses per respondent	Estimated time per response	Estimated annual burden hours
3	Provide documentation of the property value to the consumer in lieu of an appraisal, 12 CFR Part 1026.35(c)(2)(viii)(B).	Third-party Disclosure (On Occasion).	Optional	3,018	0.74	0.083	185
	Total Estimated Annual Burden Hours:	.....	.....	.....	.....	.....	7,412

General Description of Collection: Section 1471 of the Dodd-Frank Act established a new Truth in Lending (TILA) section 129H, which contains appraisal requirements applicable to higher-risk mortgages and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A higher-risk mortgage is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads. The rule requires that, within three days of application, a creditor provide a disclosure that informs consumers regarding the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer. If a loan meets the definition of a higher-risk mortgage loan, then the creditor would be required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction, and send a copy of the written appraisal to the consumer. To qualify for the safe harbor provided under the rule, a creditor is required to review the written appraisal as specified in the text of the rule and appendix A. If a loan is classified as a higher-risk mortgage loan that will finance the acquisition of the property to be mortgaged, and the property was acquired within the previous 180 days by the seller at a price that was lower than the current sale price, then the creditor is required to obtain an additional appraisal. A creditor is required to provide the consumer a copy of the appraisal reports performed in connection with the loan, without charge, at least days prior to consummation of the loan.

FDIC is revising this information collection to fully account for the scope of PRA burden delineated in Part 1036.35(c). As a result, two new items have been added to the burden table; two items previously listed separately have been combined into a single item; and one item, associated with Part 1026.35(c)(4)(iv), was deemed to not impose any additional recordkeeping, disclosure or reporting requirements, has been removed from the table. As a result of these revisions, the estimated annual burden has increased from 4,044 hours to 7,412 hours. The following is a summary of the revisions:

- The 2019 ICR did not include a line item associated with the disclosure requirement in Part 1026.35(c)(5)(i), which requires institutions to disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan (HPML): ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' FDIC has added a line item associated with this requirement to the burden table for the 2022 renewal.
- The 2019 ICR did not include a line item associated with Part 1026.35(c)(2)(viii)(B), which exempts institutions from the appraisal requirements for HPMLs secured by a manufactured home and not land if the institution obtains, and provides to the consumer no later than three business days prior to the consummation of the transaction, either: (1) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit; (2) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider, or; (3) A valuation of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes. FDIC has added a line item associated with this disclosure requirement to the burden table for the 2022 renewal.
- The 2019 ICR included two separate line items related to the disclosure requirement in Part 1026.35(c)(6)(i) for an institution to provide a copy to the applicant of any appraisal obtained pursuant to Parts 1026.35(c)(3) and 1026.35(c)(4). The 2019 ICR included one line item for the disclosure requirements for appraisals obtained pursuant to Part 1026.35(c)(3) and another for appraisals obtained pursuant to Part 1026.35(c)(4). FDIC has combined these two line items into a single line item for the 2022 renewal.
- The 2019 ICR included a line item associated with the requirement in Part 1026.35(c)(4)(iv) for one of the two appraisals for a property for which two appraisals are required under Part 1026.(c)4(i) to include an analysis of: (1) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller; (2) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (3) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. FDIC has determined that Part 1026.35(c)(4)(iv) does not impose any additional recordkeeping, disclosure, or reporting requirements on members of the public and has removed the line item associated with this requirement from the burden table for the 2022 renewal.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, August 16, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–17948 Filed 8–19–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than September 6, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Bernard Bennett Banks, as trustee of the Voting Trust Agreement, both of Evanston, Illinois;* to acquire voting shares of National Bancorp Holdings, Inc., and thereby indirectly acquire voting shares of The Federal Savings Bank, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–18061 Filed 8–19–22; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0306; Docket No. 2022–0001; Sequence No. 14]

Information Collection; General Services Administration Acquisition Regulation; Transactional Data Reporting

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division is submitting a request to the Office of Management and Budget (OMB) to review and approve an extension of a previously approved information collection requirement regarding OMB Control No. 3090–0306, Transactional Data Reporting.

DATES: Submit comments on or before: October 21, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–0306, Transactional Data Reporting via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Comment'' that corresponds with ''3090–0306, Transactional Data Reporting.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0306, Transactional Data Reporting'' on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0306, Transactional Data Reporting, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–445–0390 or email *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection is for GSA Federal Supply Schedules (FSS) and non-FSS offerors and contractors subject to transactional data report (TDR) requirements. Transactional data encompasses the historical details of the products or services delivered by a contractor during the performance of task or delivery orders issued against a contract subject to TDR requirements. TDR requirements are found within Alternate I of General Services Administration Acquisition Regulation (GSAR) clause 552.238–80, Industrial Funding Fee and Sales Reporting, and 552.216–75, Transactional Data Reporting. GSAR clauses 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts (Deviation II); Alternate I of 552.238–81, Price Reductions; 552.238–83 Examination of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities, are additional GSAR clause directly associated with FSS contracts subject to these requirements. This information collection does not apply to GSA FSS offerors and contractors subject to pricing disclosures and sales reporting requirements. The burden associated with pricing disclosures and sales reporting requirements is covered under information collection OMB control number 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting.

B. Annual Reporting Burden

The total estimated annual public cost burden for this information collection is estimated to be $18,104,484.46. The total estimated annual public burden hours resulting from this information collection is 281,344 hours. These numbers are calculated by adding up the total estimated annual burden cost/hour for each of the following GSAR clauses covered by this information collection: 552.216–75, Transactional Data Reporting; Alternate I of 552.238–80, Industrial Funding Fee and Sales Reporting; Alternate I of 552.238–81, Price Reductions; 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts (Deviation II); 552.238–83, Examination

of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities.

Burden Cost/Hour Calculation

Total estimated burden hour/cost for the basic version of 552.216–75, Transactional Data Reporting, and Alternate I of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting.

The two primary activities associated with 552.216–75, Transactional Data Reporting, and Alternate I of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting, are initial setup and monthly reporting. The below provides the basis for calculating these two activities.

Initial Setup

○ Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by senior level personnel equivalent to a GS–14, Step 5 employee. A GS–14, Step 5 employee hourly rate for 2022 is $82.51 (''Rest of U.S.'' locality using OPM Salary Table 2022–GS, Effective January 2022).

○ Estimated hours by system for initial set-up. A contractor complying with TDR requirements will absorb a one-time setup burden for purposes of establishing a reporting system (*i.e.,* automated reporting system vs. manual reporting system). The estimated setup time varies between automated and manual reporting systems. GSA estimates the average one-time initial setup burden is 8 hours for a manual system and 240 hours for an automated system.

Monthly Reporting

○ Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by mid-level personnel equivalent to a GS–12, Step 5 employee. A GS–12, Step 5 employee hourly rate for 2022 is $58.72 (*i.e.,* using ''Rest of U.S.'' locality within the OPM Salary Table for 2022–GS, Effective January 2022).

○ Categorization of contractors by sales revenue. GSA estimates the likelihood of contractors with lower to no reportable sales will spend relatively little time on reporting. In contrast, contractors with more reportable sales will face a higher reporting burden. To account for this difference, GSA is using the below sale revenue categories:

Category 1: No sales activity/revenue (*i.e.,* $0.00)
Category 2: Sales between $0.01 and $25,000.00
Category 3: Sales between $25,000.01 and $250,000.00
Category 4: Sales between $250,000.01 and $1 million
Category 5: Sales over $1 million

The below table show the estimated number of contractors (*i.e.,* both FSS and Non-FSS contractors) by sales revenue category:

ESTIMATED NUMBER OF FSS AND NON-FSS CONTRACTORS BY SALES REVENUE CATEGORY

	FSS	Non-FSS	FSS & non-FSS
Category 1	100	622	722
Category 2	500	2	502
Category 3	1,000	32	1,032
Category 4	500	73	573
Category 5	672	418	1,090
Total	2,822	1,147	3,969

○ Automated system vs. manual reporting system. GSA estimates the likelihood of a contractor creating an automated reporting system increases with a contractor's sales revenue. In contrast, contractors with little to no sales revenue are unlikely to expend the effort needed to establish an automated reporting system. To account for this difference, GSA is using the below table. The below table shows by sales revenue category the estimated percentage of the likelihood of a contractor using a manual reporting system vs automated reporting system:

PERCENTAGE OF CONTRACTORS BY TYPE OF REPORTING SYSTEM

Sales category	Manual system (%)	Automated system (%)
Category 1	100	0
Category 2	100	0
Category 3	90	10
Category 4	50	50
Category 5	10	90

The following table show the estimated number of contractors for both FSS contracts and Non-FSS contracts by type of reporting system:

ESTIMATED NUMBER OF CONTRACTORS FOR BOTH FSS CONTRACTS AND NON-FSS CONTRACTS BY TYPE OF REPORTING SYSTEM

	Manual system (FSS)	Automated system (FSS)	Manual system (non-FSS)	Automated system (non-FSS)
Category 1	100	0	622	0
Category 2	500	0	2	0
Category 3	900	100	29	3
Category 4	275	275	36	37

ESTIMATED NUMBER OF CONTRACTORS FOR BOTH FSS CONTRACTS AND NON-FSS CONTRACTS BY TYPE OF REPORTING SYSTEM—Continued

	Manual system (FSS)	Automated system (FSS)	Manual system (non-FSS)	Automated system (non-FSS)
Category 5	67	605	42	376
Totals	1,842	980	731	416

○ Estimated monthly reporting time (hours)—by reporting system and sales revenue category. GSA estimates that the monthly reporting time varies by type of reporting system (*i.e.,* manual or automated) and by respective sales revenue category. The below table shows GSA's estimated monthly reporting times per sales revenue category and system type:

MONTHLY HOURS BY TYPE OF REPORTING SYSTEM AND CATEGORY

	Manual systems	Automated systems
Category 1	0.25	2.00
Category 2	2.00	2.00
Category 3	4.00	2.00
Category 4	16.00	2.00
Category 5	48.00	2.00

Total estimated burden hour/cost for GSAR clause 552.216–75, Transactional Data Reporting.

Initial Setup.

Total estimated annual burden hours: 28,464

Total estimated annual cost burden: $2,348,650.03

Monthly Reporting.

Total estimated annual burden hours: 44,394

Total estimated annual cost burden: $2,606,982.16

Total estimated burden hour/cost for Alternate I of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting.

Initial Setup.

Total estimated annual burden hours: 34,328

Total estimated annual cost burden: $2,832,506.26

Monthly Reporting.

Total estimated annual burden hours: 170,412

Total estimated annual cost burden: $10,007,231.69

Total estimated annual burden hour/cost for 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts (Deviation II).

Estimated # of responses per year: 461

Estimated burden hours per response: × 4.25

Total estimated annual burden hours: 1,959.25

Estimated cost per hour: × $82.51

Total estimate annual cost burden: $161,663.60

Total estimated annual burden hour/cost for Alternate I of GSAR clause 552.238–81, Price Reductions.

Estimated # of responses per year: 25

Estimated burden hours per response: × 4.25

Total estimated annual burden hours: 106

Estimated cost per hour**: × $82.51

Total estimate annual cost burden: $8,775.00

Total estimated annual burden hour/cost for GSAR clause 552.238–83, Examination of Records by GSA.

Estimated # of respondents per year: 8

Estimated burden hours per respondent: × 455

Total estimated annual burden hours: 3,640

Estimated cost per hour**: × $82.51

Total estimated annual cost burden: $300,347.32

Total estimated annual burden hour/cost for GSAR clause 552.238–85, Contractor's Billing Responsibilities, is 0 burden hours/$0.00 burden cost. The reason for zero burden being associated with this clause is because the record keeping requirement contained in this clause does not add any additional burden to what is already captured by Alternate I of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting, which is covered by this information collection.

Total Estimated Annual Burden Hour/Cost

The total estimated annual burden hour/cost imposed by this information collection is as follows:

Total estimated annual burden hours

FSS contracts: 210,446

Non-FSS contracts: 72,858

Total estimated annual burden hour: 281,344

Total estimated annual cost burden FSS contracts: $13,310,515.87

Non-FSS contracts: $4,955,632.19

Total estimated annual cost burden: $18,104,484.46

C. Public Comments

Public comments are particularly invited on: Whether this collection of information continues to be necessary and whether continues to have practical utility; whether GSA's estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite ''Information Collection 3090–0306, Transactional Data Reporting'', in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–18010 Filed 8–19–22; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235; Docket No. 2022–0001; Sequence No. 13]

Information Collection; General Services Administration Acquisition Regulation; Federal Supply Schedule Pricing Disclosures and Sales Reporting

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division is submitting a request to the Office of Management and Budget (OMB) to review and approve an extension of a previously approved information collection requirement regarding OMB Control No. 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting.

DATES: Submit comments on or before: October 21, 2022.

ADDRESSES: Submit comments identified by ''Information Collection 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting'' via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Comment'' that corresponds with information collection 3090–0235. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting'' on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite information collection ''3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting'' in all correspondence related to this collection. All comments received will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–445–0390 or email *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection is for GSA Federal Supply Schedules (FSS) offerors and contractors subject to certain pricing disclosures and sales reporting requirements. These pricing disclosures and sales reporting requirements are found within the basic version of General Services Administration Acquisition Regulation (GSAR) clause 552.238–80, Industrial Funding Fee and Sales Reporting, and GSAR 515.408(b) and (c). Alternate I of GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts; basic version of GSAR clause 552.238–81, Price Reductions; 552.238–83 Examination of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities, are additional GSAR clauses directly associated with FSS contracts subject to these requirements. This information collection does not apply to GSA FSS offerors and contractors subject to Transactional Data Reporting (TDR) requirements. The burden associated with TDR requirements is covered under information collection OMB control number 3090–0306, Transactional Data Reporting.

B. Annual Reporting Burden

The total estimated annual public cost burden for this information collection is estimated to be $117,802,204.70 The total estimated annual public burden hours resulting from this information collection is 1,452,326.36 hours. These numbers are calculated by adding up the total estimated annual burden cost/hour for each of the following GSAR sections/clauses covered by this information collection: GSAR section 515.408(b) and (c); basic version of 552.238–80, Industrial Funding Fee and Sales Reporting; Alternate I of 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts; basic version of 552.238–81, Price Reductions; 552.238–83 Examination of Records by GSA; and 552.238–85, Contractor's Billing Responsibilities.

The calculation for some of these numbers account for the variation of burden associated with compliance with a given clause/form/instruction requirement. For example, for some of the calculations GSA is calculating the burden based on the difference between a ''heavier lift'' contract and a ''lighter lift'' contract. Contracts with heavier lifts are those with the characteristics leading to increased burden, such as higher sales volume, higher number of offerings, complexity of their offerings, higher transactions, complexity of transactions, and/or intricate business structures. For the purpose of determining ''lift'', GSA is utilizing the Pareto principle, or ''80/20 rule,'' which states 80 percent of effects come from 20 percent of the population. Accordingly, GSA is categorizing contracts with a heavier lift as 20 percent and those with a lighter lift as those representing 80 percent.

Burden Cost/Hour Calculation

Total estimated burden hour/cost for the basic version of 552.238–80, Industrial Funding Fee and Sales Reporting.

The two primary activities associated with the basic version of 552.238–80, Industrial Funding Fee and Sales Reporting are initial setup and quarterly reporting. The below provides the basis for calculating the burden associated with these two activities. The burden associated with these two activities is then used to calculate the overall burden for this clause.

Initial Setup

- Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by personnel equivalent to a GS–14, Step 5 employee. A GS–14, Step 5 employee hourly rate for 2022 is $82.51 (''Rest of U.S.'' locality using OPM Salary Table 2022–GS, Effective January 2022).
- Estimated hours by system for initial set-up. A contractor complying with these requirements will absorb a one-time setup burden for purposes of establishing a reporting system (*i.e.,* automated reporting system vs. manual reporting system). The estimated setup time varies between automated and manual reporting systems. GSA estimates the average one-time initial setup burden is 8 hours for a manual system and 40 hours for an automated system.

Quarterly Reporting

- Estimated hourly rate & job position equivalency. The estimated hourly cost associated with this task is based on the task being accomplished by personnel equivalent to a GS–12, Step 5 employee. A GS–12, Step 5 employee hourly rate for 2022 is $58.72 (*i.e.,* using ''Rest of U.S.'' locality within the OPM Salary Table for 2022–GS, Effective January 2022).
- Categorization of contractors by sales revenue. GSA estimates the likelihood of contractors with lower to no reportable sales will spend relatively

little time on reporting. In contrast, contractors with more reportable sales will face a higher reporting burden. To account for this difference, GSA is using the below sale revenue categories:

Category 1: No sales activity/revenue (*i.e.,* $0.00)

Category 2: Sales between $0.01 and $25,000.00

Category 3: Sales between $25,000.01 and $250,000.00

Category 4: Sales between $250,000.01 and $1 million

Category 5: Sales over $1 million

The below table shows the estimated number of FSS contractors by sales revenue category:

FSS CONTRACTORS BY SALES REVENUE CATEGORY

	FSS
Category 1	6,292
Category 2	1,160
Category 3	2,987
Category 4	1,828
Category 5	2,762
Total	15,029

○ Automated system vs. manual reporting system. GSA estimates the likelihood of a contractor creating an automated reporting system increases with a contractor's sales revenue. In contrast, contractors with little to no sales revenue are unlikely to expend the effort needed to establish an automated reporting system. To account for this difference, GSA is using the below table. The below table shows by sales revenue category the estimated percentage of the likelihood of a contractor using a manual reporting system vs automated reporting system:

% OF CONTRACTORS BY TYPE OF REPORTING SYSTEM

[Manual vs. automated]

Sales category	Manual system (%)	Automated system (%)
Category 1	100	0
Category 2	100	0
Category 3	90	10
Category 4	50	50
Category 5	10	90

The following table show the estimated number of FSS contractors by type of reporting system:

ESTIMATED NUMBER OF FSS CONTRACTORS BY TYPE OF REPORTING SYSTEM

[Manual vs. automated]

	Manual system	Automated system
Category 1	6,292	0
Category 2	1,160	0
Category 3	2,688	299
Category 4	914	914
Category 5	276	2,486
Total	11,330	3,699

○ Estimated quarterly reporting time (hours)—by reporting system and sales revenue category. GSA estimates that the reporting time varies by type of reporting system (*i.e.,* manual or automated) and by respective sales revenue category. The below table shows GSA's estimated quarterly reporting time per sales revenue category and system type:

QUARTERLY REPORTING TIME—HOURS BY TYPE OF REPORTING SYSTEM AND SALES REVENUE CATEGORY

	Manual systems	Automated systems
Category 1	0.25	2.00
Category 2	1.00	2.00
Category 3	2.00	2.00
Category 4	4.00	2.00
Category 5	8.00	2.00

Total estimated burden hour/cost for the basic version of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting.

Initial Setup.

Total estimated annual burden hours: 18,240

Total estimated annual cost burden: $1,505,037.12

Quarterly Reporting.

Total estimated annual burden hours: 85,484

Total estimated annual cost burden: $5,019,941.05

Total estimated annual burden hour/cost for GSAR 515.408(b) and (c).

Heavier Lift

Estimated # of responses per year: 499
Estimated burden hours per response: × 82.96
Total estimated annual burden hours: 41,397.04
Estimated cost per hour: × $82.51
Total estimate annual cost burden: 3,415,793.96

Lighter Lift

Estimated # of responses per year: 1,996
Estimated burden hours per response: × 64.82
Total estimated annual burden hours: 129,381.72
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $10,675,591.35

Total estimated annual burden hour/cost for Alternate I of 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

Heavier Lift

Estimated # of responses per year: 420
Estimated burden hours per response: × 10.45
Total estimated annual burden hours: 4,389
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $362,149.56

Lighter Lift

Estimated # of responses per year: 1,680
Estimated burden hours per response: × 9.17
Total estimated annual burden hours: 15,406.60
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $1,271,162.27

Total estimated annual burden hour/cost for basic version of GSAR clause 552.238–81, Price Reductions. The primary activities associated with this clause are training, compliance systems, and notification. As a result, for the purpose of calculating the overall burden associated with this clause, the burden was calculated for each of these activities using first. For some of these activities the heavier lift and lighter lift categorization was used.

Training—Heavier Lift

Estimated # of responses per year: 2,620
Estimated burden hours per response: × 40
Total estimated annual burden hours: 104,800
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $8,647,362.40

Training—Lighter Lift

Estimated # of responses per year: 10,479
Estimated burden hours per response: × 20
Total estimated annual burden hours: 209,580
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $17,293,074.54

Monitoring—Heavier Lift

Estimated # of responses per year: 2,620
Estimated burden hours per response: × 175
Total estimated annual burden hours: 458,500
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $37,832,210.50

Monitoring—Lighter Lift

Estimated # of responses per year: 10,479
Estimated burden hours per response: × 35
Total estimated annual burden hours: 366,765
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $30,262,880.45

Notification

Estimated # of responses per year: 900
Estimated burden hours per response: × 4.25
Total estimated annual burden hours: 3,825
Estimated cost per hour: × $82.51
Total estimate annual cost burden: $315,612.23

Total estimated annual burden hour/cost for GSAR clause 552.238–83 Examination of Records by GSA.

Estimated # of respondents per year: 32
Estimated burden hours per respondent: × 455
Total estimated annual burden hours: 14,560
Estimated cost per hour: × $82.51
Total estimated annual cost burden: $1,201,389.28

Total estimated annual burden hour/cost for GSAR clause 552.238–85, Contractor's Billing Responsibilities, is 0 burden hours/$0.00 burden cost. The reason for zero burden being associated with this clause is because the record keeping requirement contained in this clause does not add any additional burden to what is already captured by the basic version of GSAR clause 552.238–80, Industrial Funding Fee and Sales Reporting, which is covered by this information collection.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite ''OMB Control No. 3090–0235, Federal Supply Schedule Pricing Disclosures and Sales Reporting'', in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–18005 Filed 8–19–22; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086; Docket No. 2022–0001; Sequence No. 9]

Information Collection; General Services Administration Acquisition Regulation; Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

DATES: *Submit comments on or before:* October 21, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–0086 via *http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217''. Select the link that corresponds with ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form

1217''. Follow the instructions provided on the screen. Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217'' on your attached document.

Instructions: All items submitted must cite OMB control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Marten Wallace, Procurement Analyst, General Services Acquisition Policy Division, 202–286–5807 or via email at *marten.wallace@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition, management, and disposal of real and personal property. These mission responsibilities include developing requirements, solicitation of lease offers and the award of real property lease contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to (1) evaluate whether the physical attributes of offered properties meet the Government's requirements and (2) evaluate the owner/offeror's price proposal. The approval requested includes four versions of the GSA Form 1364; GSA Forms 1364, 1364A, 1364A–1, and 1364WH. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offeror construction overhead fees.

A total of seven lease contract models have been developed to meet the needs of the national leased portfolio. Three of these lease models require offerors to complete a GSA Form 1364 and two require a GSA Form 1217. The GSA Form 1364 versions require the submission of information specifically aligned with certain leasing models and avoids mandating submission of information that is not required for use in evaluation and award under each model. The GSA Form 1217 requires the submission of information specific to the services and utilities of a building in support of the pricing detailed under GSA Form 1364. The forms relate to individual lease procurements and no duplication exists.

The Global Lease model uses the GSA Form 1364. The 1364 captures all rental components, including the pricing for the initial tenant improvements. The global nature of the 1364 provides flexibility in capturing tenant improvement pricing based on either allowance or turnkey pricing, as required by the solicitation.

The Simplified Lease Model uses the GSA Forms 1364A and 1364A–1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form. The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements.

The 1364A–1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A–1 is separate from the proposal itself and is maintained in the lease file; it does not become an exhibit to the lease. The 1364A–1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Warehouse Lease Model uses GSA Form 1364WH. This model is specifically designed to accommodate the special characteristics of warehouse space and is optimized for space whose predominant use is for storage, distribution, or manufacturing. The 1364WH captures building characteristics unique to warehouse facilities and allows for evaluation of offers based on either area or volume calculations.

The Global and Warehouse Lease Models use the GSA Form 1217. GSA Form 1217 captures the estimated annual cost of services and utilities and the estimated costs of ownership, exclusive of capital charges. These costs are listed for both the entire building and the area proposed for lease to the Government, broken down into specific categories.

B. Annual Reporting Burden

Respondents: 505.

Responses per Respondent: 3.36 (weighted average).

Total Responses: 1,732.

Hours Per Response: 4.11 (weighted average).

Total Burden Hours: 7,150.

C. Public Comments

No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–18007 Filed 8–19–22; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0321; Docket No. 2022–0001; Sequence No. 10]

Submission for OMB Review; Improving Customer Experience—Implementation of Section 280 of OMB Circular A–11

AGENCY: General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension without change to an existing information collection requirement regarding the Implementation of Section 280 of OMB

Circular A–11—''Improving Customer Experience''.

DATES: Submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for this 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: Requests for additional information should be directed to Amira Boland, 202–501–4755, or via email to *GSARegSec@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

Section 280.7 established seven domains for measuring customer experience.

- Overall: (1) Satisfaction, (2) Confidence/Trust
- Service: (3) Quality
- Process: (4) Ease/Simplicity, (5) Efficiency/Speed, (6) Equity/Transparency
- People: (7) Employee Helpfulness

All High Impact Service Providers listed at *https://www.performance.gov/cx/HISPList.pdf* are required to ask questions in these domains of their customers. However, all agencies are encouraged to conduct their customer experience measurement in line with these standard measures.

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. For the purposes of this collection, Federal customer experience will focus on real-time transaction-level measures.

The results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

For reference, the questions (also available on *www.performance.gov*) are below. All are on a Likert Scale from 1 to 5 (1=strongly disagree to 5=strongly agree (except free text questions)).

[Landing Page]

1. I am satisfied with the service I received from [Program/Service name].)
2. This interaction increased my confidence in [Program/Service name]. OR I trust [Agency/Program/Service name] to fulfill our country's commitment to [relevant population].
3. Anything you want to tell us about your scores above? (free text)
4. Would you like to take two more minutes to answer five more questions to help us improve our services? (Y/N)

[Page 2 if Respondent Answered Y—Programs Will Select What Is Applicable to Them]

5. My need was addressed.
6. It was easy to complete what I needed to do.
7. It took a reasonable amount of time to do what I needed to do.
8. I was treated fairly.
9. Employees I interacted with were helpful.
10. Which service center did you visit today? OR ''which service did you call about today?''
11. Anything else you'd like to share with us? (free text)

Following review and disposition of public comments on this 60-day notice, GSA will submit to OMB a 30-day notice. Upon renewal of the collection, GSA will continue to submit collections on behalf of the following agencies for approval: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor Department of State, United States Agency for International Development, the General Services Administration, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, National Aeronautics and Space Administration, the Consumer Financial Protection Bureau, National Science Foundation, Nuclear Regulatory Commission, the Small Business Administration, the Office of Personnel Management, and Social Security Administration.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

GSA will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes;
- Upon agreement between OMB and the agency collecting the information, all or a subset of information may be released only on performance.gov. Release of any other data must be discussed with OMB before release.

Public responses to these individual collections will provide insight on improving services offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

B. Annual Reporting Burden

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. 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.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this collection.

Average Expected Annual Number of Activities: Approximately 50 customer feedback surveys.

Average Number of Respondents per Activity: Range varies greatly depending on Federal Service.

Annual Responses: Approximately 40,000,000.

Average Minutes per Response: 3 minutes.

Burden Hours: 2,000,000.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 36325 on June 16, 2022. No comments were received. The 60-day notice was published as a request for a new information collection. This 30-day notice corrects that language and is confirmation that the 60 and 30-day notices will serve as a request for renewal and extension without change.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–18026 Filed 8–19–22; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0995; Docket No. CDC–2022–0094]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Network of Sexually Transmitted Diseases Clinical Prevention Training Centers. The purpose of the collection is to support program management of the National Network of Sexually Transmitted Disease Clinical Prevention Training Center (NNPTC) and to evaluate the reach and impact of the NNPTC's training activities.

DATES: CDC must receive written comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0094 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Network of Sexually Transmitted Diseases Clinical Prevention Training Centers (NNPTC): Evaluation (OMB Control No. 0920–0995, Exp. 06/30/2023) — Revision— National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of STD Prevention requests an Extension and three-year approval of the currently approved information collection request that comprises the NNPTC Abbreviated Health Professional Application for Training (NNPTC Abbreviated HPAT). This Extension will allow the NNPTC Abbreviated HPAT to continue to serve as the official training application form used for training activities conducted by the Sexually Transmitted Disease (STD) Prevention Training Centers' (PTCs) grantees funded by the (CDC). The PTCs are funded by CDC/Division of STD Prevention (DSTDP) to provide training and capacity-building that includes information, training, technical assistance, and technology transfer.

PTCs offer classroom and experiential training, web-based training, clinical consultation, and capacity building assistance to maintain and enhance the capacity of health care professionals to control and prevent STDs and HIV. The NNPTC Abbreviated HPAT is used to monitor and evaluate performance and reach of grantees that offer STD and HIV prevention training, training assistance,

and capacity building assistance to physicians, nurses, disease intervention specialists, and health educators. During the previously approved three-year period, data was collected to monitor and evaluate the performance of the NNTPC grantees and the NNPTC program. This data provided the NNPTC with necessary information to improve program processes and operations to improve the quality of STD prevention and treatment.

The 4,500 respondents represent an average of the number of health professionals trained by PTC grantees during 2015. This data collection is necessary to assess and evaluate the performance of the grantees in delivering training and to standardize training registration processes across the PTCs. The NNPTC Abbreviated HPAT allows CDC grantees to use a single instrument when collecting demographic data from its training and capacity building participants, regarding their: (1) occupations, professions, and functional roles; (2) principal employment settings; (3) location of their work settings; and (4) programmatic and population foci of their work. The NNPTC HPAT takes approximately three minutes to complete. This data collection provides CDC with information to determine whether the training grantees are reaching their target audiences in terms of provider type, the types of organizations in which participants work, the focus of their work, and the population groups and geographic areas served.

The CDC's Funding Opportunity Announcement PS 20–2024, National Network of Sexually Transmitted Diseases Clinical Prevention Training Centers (NNPTC) requires the collection of national demographic information on grantees' trainees and national evaluation outcomes. The evaluation instruments are used to assess training and capacity-building outcomes (knowledge, confidence, intention to use information, actual changes made as a result of training) immediately after and again 90 days after training events. The evaluation instruments vary based on the type of training offered and take between approximately three minutes to complete (for short didactic or webinar sessions) to 10 minutes to complete (for intensive multi-day trainings).

There are no costs to respondents other than their time to participate. The estimated annualized burden hours for this data collection are 447 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Healthcare Professionals	NNPTC Abbreviated Health Professional Application for Training (NNPTC HPAT).	4,500	1	3/60	225
Healthcare Professionals	Immediate Post-Course email invitation	4,500	1	1/60	75
Healthcare Professionals	3-month Long-Term email invitation	660	1	1/60	11
Healthcare Professionals	Basic Post-Course Evaluation	1200	1	3/60	60
Healthcare Professionals	Basic Long-Term Evaluation	400	1	3/60	14
Healthcare Professionals	Intensive Complete Post-Course Evaluation	300	1	10/60	50
Healthcare Professionals	Intensive Complete Long-Term Evaluation	120	1	6/60	12
Total					447

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–17987 Filed 8–19–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1163; Docket No. CDC–2022–0095]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled CDC Fellowship Programs Assessments. Data collected as part of this project is associated with quality improvement of CDC fellowship programs.

DATES: CDC must receive written comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0095 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Lead, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of

information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Data Collection for CDC Fellowship Programs (OMB Control No. 0920–1163, Exp. 3/31/2023)—Extension—Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's mission is to protect America from health, safety, and security threats, both foreign and in the U.S. To ensure a competent, sustainable, and empowered public health workforce prepared to meet these challenges, CDC plays a key role in developing, implementing, and managing a large number of fellowship programs. A fellowship is defined as a training or work experience lasting at least one month and consisting of primarily experiential (*i.e.,* on-the-job) learning, in which the trainee has a designated mentor or supervisor. CDC fellowships are intended to develop public health professionals, enhance the public health workforce, and strengthen collaborations with partners in public health and healthcare organizations, academia, and other partners in governmental and non-governmental organizations. Assessing fellowship activities is essential to ensure that the public health workforce is equipped to promote and protect the public's health.

CDC requests a three-year Extension of a Generic clearance to collect data about its fellowship programs, as they relate to public health workforce development. Data collections will allow for ongoing, collaborative, and actionable communications between CDC fellowship programs and those most affected by those programs (*e.g.,* fellows, supervisors/mentors, alumni). These collections might include short surveys, interviews, and focus groups. Intended use of the resulting information is to:

- inform planning, implementation, and continuous quality improvement of fellowship activities and services;
- improve efficiencies in the delivery of fellowship activities and services; and
- determine to what extent fellowship activities and services are achieving established goals.

Collection and use of information about CDC fellowship activities will help ensure effective, efficient, and satisfying experiences among fellowship program participants and stakeholders.

CDC estimates that annually, a given fellowship program will conduct one query each with one of the three respondent groups: fellowship applicants or fellows; mentors, supervisors, or employers; and alumni. The total annualized burden hours of 2,957 was determined as depicted in the following table. Burden estimates remain unchanged in this Extension. Although use of this Generic ICR was lower in the last two years because of program disruptions from the COVID–19 pandemic, CDC expects use to return to anticipated levels. OMB approval is requested for three years. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Applicants or fellows	Fellowship Data Collection Instrument.	1,848	1	30/60	924
Mentors, supervisors, or employers	Fellowship Data Collection Instrument.	370	1	30/60	185
Alumni	Fellowship Data Collection Instrument.	3,696	1	30/60	1,848
Total					2,957

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–17989 Filed 8–19–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1279; Docket No. CDC–2022–0093]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on an existing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an existing information collection project titled WISEWOMAN National Program Evaluation. The goal of the study is to assess the implementation of the WISEWOMAN program under the current cooperative agreement and measure the effect of the program on individual, organizational, and community-level outcomes.

DATES: CDC must receive written comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0093 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

WISEWOMAN National Program Evaluation (OMB Control No. 0920–1279, Exp. 12/31/2022)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC has supported the WISEWOMAN (Well-Integrated Screening and Evaluation for Women Across the Nation) program since 1995. The WISEWOMAN program is designed to serve low-income women ages 40–64 who have elevated risk factors for cardiovascular disease (CVD) and have no health insurance, or are underinsured for medical and preventive care services. Through the WISEWOMAN program, women have access to screening services for selected CVD risk factors such as elevated blood cholesterol, hypertension, and abnormal blood glucose levels; referrals to heathy behavior support programs; and referrals to medical care. WISEWOMAN participants must be co-enrolled in the CDC-sponsored National Breast and Cervical Cancer Early Detection Program (NBCCEDP).

The WISEWOMAN program is administered through cooperative agreements with state, territorial, or tribal health departments. Each WISEWOMAN recipient submits to CDC an annual progress report that describes program objectives and activities, and semi-annual data reports (known as minimum data elements, or MDEs) on the screening, assessment, and healthy behavior support services offered to women who participate in the program. Participant-level MDE are de-identified prior to transmission to CDC.

In 2018, CDC released the fifth funding opportunity announcement (FOA) for the WISEWOMAN program (DP18–1816), which resulted in five-year cooperative agreements with 24 state, territorial, and tribal health departments, including six new and 18 continuing awardees from the previous funding opportunity. Key program elements were retained (*e.g.,* provision of screening services, promotion of healthy lifestyle behaviors, and linkage to healthy behavior support services and community based resources), but a number of changes were incorporated into the program at that time. The current FOA reflects increased emphasis on three strategies to reduce CVD risk and support hypertension control and management, including: (1) tracking and monitoring clinical measures; (2) implementing team-based care; and (3) linking community resources and clinical services to support care coordination, self-management, and lifestyle change.

CDC seeks to conduct a multi-component evaluation to assess the effectiveness of the program on individual, organizational, and community-level outcomes. The in-depth assessment is designed to complement the routine progress and MDE information already being collected from WISEWOMAN program recipients. The data collection focuses on obtaining qualitative and quantitative information at the organizational and community levels about process and procedures implemented, and barriers, facilitators, and other contextual factors that affect program implementation and

participant outcomes. Data collection activities include a Program Survey with all WISEWOMAN awardee programs, administered in the second and fourth program years, and a one-time site visit to each recipient spread across the three-year data collection effort. During site visits, semi-structured interviews will be conducted with WISEWOMAN staff members and staff at partner organizations, such as clinical providers and community-based resource providers, who are positioned to provide a variety of perspectives on program implementation.

OMB approval is requested for a one-year Extension. CDC requests approval for an estimated 84 annual burden hours. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
WISEWOMAN Recipient Administrators.	Program survey	16	1	1	16
	Site Visit Discussion Guide	8	1	90/60	12
	Innovation Site Visit Discussion Guide.	2	1	45/60	2
Recipient partners	Site Visit Discussion Guide	16	1	1	16
	Innovation Site Visit Discussion Guide.	2	1	45/60	2
Healthy behavior support staff	Site Visit Discussion Guide	16	1	1	16
	Innovation Site Visit Discussion Guide.	2	1	45/60	2
Clinical providers	Site Visit Discussion Guide	16	1	1	16
	Innovation Site Visit Discussion Guide.	2	1	45/60	2
Total					84

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–17990 Filed 8–19–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS). The BSC, NCHS consists of up to 15 experts including the Chair in fields associated with statistical, demographic, and epidemiological research, such as biostatistics/biometry, survey methodology and polling, sociology, reproductive health, minority health, nutrition, social and behavioral health sciences, and population-based public and environmental health; public health practice, *e.g.,* state and local health data systems; operations research, health policy, and health services research, including health economics and econometrics; provision of health services, *e.g.,* medicine, nursing, rehabilitation, other allied health care, and preventive medicine; health quality measurement and health indicators; health promotion; medical informatics; and data and health information security, storage, confidentiality, and dissemination.

DATES: Nominations for membership on the BSC, NCHS must be received no later than October 14, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *NCHS-BSCmail@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca Hines, M.H.S., Designated Federal Officer, Board of Scientific Counselors, NCHS, CDC, 3311 Toledo Road, Mailstop P–08, Hyattsville, Maryland 20782; Telephone: (301) 458–4715; Email: *RSHines@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the Board's objective to provide advice and guidance on statistical and epidemiological research, data collection, and activities that support the National Center for Health Statistics, such as: determinants of health; extent and nature of illness and disability, including life expectancy; incidence of various acute and chronic illnesses/impairments and accidental injuries; prevalence of chronic diseases and impairments; infant and maternal morbidity and mortality; nutrition status; environmental, social, and other hazards affecting health status; health resources associated with physician and dental visits, hospitalizations, nursing, extended care facilities, home health agencies, and other health institutions; utilization of health care in a broad array of settings; trends in prices/costs and sources of payments; federal, state, and local government expenditures for health care services; the relationship between demographic and socioeconomic characteristics and health characteristics; family formation, growth, and dissolution; new or improved methods for obtaining current data on the aforementioned factors; data security and confidentiality and comparability of data; and standardized means to collect information and statistics.

Additionally, the Board makes recommendations about opportunities for NCHS programs to examine and employ new approaches to monitoring and evaluating key public health, health policy, and public policy changes. This includes automation, data modernization, and technological

improvements to enhance data collection, analysis, access, and reporting capabilities of the Center.

Members of the BSC, NCHS are responsible for surveying the state-of-the-art of their respective disciplines, and reporting, as appropriate, to the full Board and recommending convening of workshops or symposia to educate or update all Board members.

The selection of members is based on candidates' qualifications to contribute to accomplishing BSC, NCHS objectives (*https://www.cdc.gov/nchs/about/bsc.htm*). Members may be invited to serve for up to four-year terms.

The U.S. Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the Board's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for BSC, NCHS membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in June, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Current resume/curriculum vitae, including complete contact information (telephone numbers, mailing address, email address) in Microsoft Word or PDF format.
- Short biographical sketch, including the top 3–5 areas of expertise and a statement of interest in serving on the Board.
- At least two professional references from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit references from current HHS employees if they wish, but at least one reference must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, HRSA, NIH, AHRQ).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

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. 2022–17991 Filed 8–19–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day0–22–22HY; Docket No. CDC–2022–0099]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled, Centralized Institutional Review for the CDC Expanded Access Investigational New Drug (EA-IND) for Use of Tecovirimat (TPOXX®) for Treatment of Human Non-Variola Orthopoxvirus Infections. This proposed project is essential to CDC's Monkeypox emergency response and is designed to assist healthcare providers to provide tecovirimat (TPOXX) treatment to patients with monkeypox under the EA-IND.

DATES: CDC must receive written comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0099 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;

4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Centralized Institutional Review for the CDC Expanded Access Investigational New Drug (EA-IND) for Use of Tecovirimat (TPOXX®) for Treatment of Human Non-Variola Orthopoxvirus Infections—New—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Monkeypox is a zoonosis, caused by the Orthopoxvirus (OPXV) Monkeypox virus (MPXV), and is endemic to forested areas of West and Central Africa. In humans, infection with MPXV can lead to a smallpox-like illness with fatal outcomes in up to 11% of patients without prior smallpox vaccination. Since May 2022, clusters of monkeypox cases, have been reported in 19 countries that do not normally have monkeypox, and the number of confirmed cases in the U.S. is rapidly increasing.

Tecovirimat (also known as TPOXX) is FDA-approved for the treatment of human smallpox disease caused by Variola virus in adults and children. However, its use for other orthopoxvirus infections, including monkeypox, is not approved by the FDA. CDC currently holds a non-research expanded access Investigational New Drug (EA-IND) protocol that allows for the use of tecovirimat for primary or early empiric treatment of non-variola orthopoxvirus infections, including monkeypox, in adults and children of all ages.

FDA regulations require that an Institutional Review Board (IRB) review, approve and maintain oversight of the activities under the EA-IND as set forth in 21 CFR parts 50, 56, and 312. The CDC IRB is positioned to serve as the central IRB for review and approval of the EA-IND consistent 21 CFR 56.114. This arrangement allows facilities to use or rely on the CDC IRB for centralized review and approval for this protocol in place of review by the site-specific IRB to help reduce duplication of effort, delays, and increased expenses. Any facility that receives tecovirimat for treatment of orthopoxvirus infection under the EA-IND may elect to rely on the CDC IRB to meet FDA's regulatory requirements.

The IRB review is required by FDA under the CDC's approved EA-IND. Therefore, CDC must maintain records of which facilities have elected to rely on the CDC IRB for centralized review and which facilities elect to obtain IRB review on their own.

CDC will use collected data to track and document the institutions relying on the CDC IRB so they can provide tecovirimat (TPOXX) treatment to their patients with monkeypox under the EA-IND.

CDC requests OMB approval for an estimated 13,333 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Hospital/IRB Administrators	CDC IRB Authorization Agreement (for review).	5,000	1	1	5,000
Hospital/IRB Administrators	CDC IRB Authorization Agreement (for completion and submission to CDC.	5,000	10	10/60	8,333
Total					13,333

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–17986 Filed 8–19–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0893]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Center for Devices and Radiological Health Appeals Processes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 21, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0738. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–45, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Center for Devices and Radiological Health Appeals Processes

OMB Control Number 0910–0738—Extension

This information collection supports implementation of recommendations found in FDA guidance. As discussed in the document entitled ''Guidance for

Industry and Food and Drug Administration Staff; Center for Devices and Radiological Health (CDRH) Appeals Processes'' (July 2019), there are various processes by which appeals requests regarding review of decisions or actions by CDRH may be submitted to the Agency. The guidance is available for download from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/center-devices-and-radiological-health-cdrh-appeals-processes.* The guidance document provides general format and content recommendations in this regard, discusses applicable regulations with regard to the timing of such submissions, and describes the collection of information not expressly specified under existing regulations such as the submission of the request for review, minor clarifications as part of the request, and supporting information. While CDRH already possesses in the administrative file the information that would form the basis of a decision on a matter under appeal, the submission of information as recommended in the guidance regarding the appeal request itself, as well as data and information relied on by the requestor in the appeal, will help facilitate timely resolution of the decision under review. We are accounting for burden respondents may incur as a result of these Agency recommendations in this collection request. Additional information about the CDRH appeals process is described in the companion guidance entitled ''Center for Devices and Radiological Health (CDRH) Appeals Processes: Questions and Answers About 517A—Guidance for Industry and Food and Drug Administration Staff'' (March 2020), also available for download from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/center-devices-and-radiological-health-cdrh-appeals-processes-questions-and-answers-about-517a.*

In the **Federal Register** of February 18, 2022 (87 FR 9365) we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

CDRH Appeals Processes: Guidance for Industry and FDA Staff	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Recommended format and content elements	35	1	35	8	280

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate 35 requests will be submitted annually to review decisions and actions by CDRH employees, we attribute one respondent per submission, and we assume each request will take 8 hours to prepare. Based on our evaluation of the information collection since last OMB approval, we have made no adjustments to the currently approved burden estimate.

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18065 Filed 8–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2544]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice; Quality System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements related to the medical devices current good manufacturing practice (CGMP) quality system (QS) regulation (CGMP/QS regulation).

DATES: Either electronic or written comments on the collection of information must be submitted by October 21, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 21, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–2544 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice; Quality System Regulation.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Current Good Manufacturing Practice Quality System Regulation—21 CFR Part 820

OMB Control Number 0910–0073—Extension

As authorized under section 520(f) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services has issued regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a device, but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to CGMP, and assure that the device will be safe and effective and otherwise in compliance with the FD&C Act.

The QSR under part 820 (21 CFR part 820) sets forth CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The requirements cover purchasing and service controls, clarify recordkeeping for device failure and complaint investigations, clarify requirements for verifying/validating production processes and process or product changes, and clarify requirements for product acceptance activities, quality data evaluations, and corrections of nonconforming product/quality problems. In the **Federal Register** of February 23, 2022 (87 FR 10119), we proposed to incorporate by reference International Organization for Standardization 13485 (ISO 13485): Medical devices—Quality Management Systems—Requirements for Regulatory Purposes, the 2016 edition, to the QSR (RIN 0910–AH99), to align implementation of requirements.

Information collection under the QSR is intended to assist FDA in assuring the safety of medical devices. Requirements include documenting the establishment of procedures and identifying required records that assist FDA in determining whether firms are in compliance with CGMP. In particular, for example, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries. Records must be made available for review or copying during FDA inspection. The regulations in part 820 apply to approximately 29,424 respondents, based on current data within our device registration and listing database.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 820; required records	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
QUALITY SYSTEM REQUIREMENTS—Subpart B	29,424	1	29,424	83	2,442,192
DESIGN CONTROLS—Subpart C	29,424	1	29,424	132	3,883,968
DOCUMENT CONTROLS—Subpart D	29,424	1	29,424	11	323,664
PURCHASING CONTROLS—Subpart E	29,424	1	29,424	28	823,872
IDENTIFICATION & TRACEABILITY—Subpart F	29,424	1	29,424	2	58,848
PRODUCTION & PROCESS CONTROLS—Subpart G	29,424	1	29,424	31	912,144
ACCEPTANCE ACTIVITIES—Subpart H	29,424	1	29,424	6	176,544
NONCONFORMING PRODUCT; CORRECTIVE & PREVENTATIVE ACTION—Subparts I and J	29,424	1	29,424	23	676,752
LABELING & PACKAGING CONTROLS—Subpart K	29,424	1	29,424	3	88,272
HANDLING, STORAGE, DISTRUBTION, & INSTALLATION—Subpart L	29,424	1	29,424	15	441,360
RECORDS—Subpart M	29,424	1	29,424	10	294,240
SERVICING—Subpart N	29,424	1	29,424	3	88,272
STATISTICAL TECHNIQUES—820.250—Subpart O	29,424	1	29,424	1	29,424
Totals					10,239,552

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 1,217,800 hours. We made this adjustment to correspond with an observed increase in submissions relating to medical devices and an increase in respondents in the medical device industry since last OMB review and approval of the information collection.

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18072 Filed 8–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–N–1222; FDA–2015–N–3662; FDA–2013–N–1425; FDA–2008–D–0530; FDA–2019–N–0482; FDA–2021–N–1192; FDA–2018–N–4042; FDA–2015–N–3815; FDA–2019–N–0721; and FDA–2013–N–0013]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Food Labeling: Notification Procedures for Statements on Dietary Supplements	0910–0331	7/31/2025
Guidance for Reagents for Detection of Specific Novel Influenza A Viruses	0910–0584	7/31/2025
Mitigation Strategies to Protect Food Against Intentional Adulteration	0910–0812	7/31/2025
Tropical Disease Priority Review Vouchers	0910–0822	7/31/2025
Reporting Associated with New Animal Drug Applications and Veterinary Master Files	0910–0032	8/31/2025
Substances Generally Recognized as Safe: Notification Procedure	0910–0342	8/31/2025
Establishing and Maintaining Lists of U.S. Product Manufacturers/Processors With Interest in Exporting CFSAN-Regulated Products	0910–0509	8/31/2025
Electronic Submission of Medical Device Registration and Listing	0910–0625	8/31/2025
Accreditation of Third Party Certification Bodies to Conduct Food Safety Audits and Issue Certifications	0910–0750	8/31/2025
Sanitary Transportation of Human and Animal Food	0910–0773	8/31/2025

Dated: August 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18062 Filed 8–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Council on Migrant Health (NACMH) has scheduled a public meeting. Information about NACMH and the agenda for this meeting can be found on the NACMH website at: *https://www.hrsa.gov/advisory-committees/migrant-health.*

DATES: November 2–3, 2022, 9 a.m.–5 p.m. eastern time.

ADDRESSES: This meeting may be held in-person at 5600 Fishers Lane, Rockville, Maryland 20857 and/or virtually. For information about how the meeting will be held, visit the NACMH website 30 business days before the meeting date, where instructions for joining the meeting either in-person or remotely will be posted.

FOR FURTHER INFORMATION CONTACT: Esther Paul, NACMH, Designated Federal Official, Strategic Initiatives, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Rockville, MD 20857; 301–594–4300; or *epaul@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACMH advises, consults with, and makes recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning the activities under section 217 of the Public Health Service Act, as amended (42 U.S.C. 218). Specifically, NACMH provides recommendations concerning the organization, operation, selection, and funding of migrant health centers, and other entities under grants and contracts under section 330 of the Public Health Service Act (42 U.S.C. 254b). NACMH meets twice each calendar year, or at the discretion of the Designated Federal Official in consultation with the NACMH Chair.

During the November 2–3, 2022, meeting, NACMH will discuss topics related to migratory and seasonal agricultural worker health. Agenda items are subject to change as priorities dictate. Refer to the NACMH website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACMH should be sent to Esther Paul, Designated Federal Official, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Esther Paul at the address and phone number listed above at least 10 business days prior to the meeting. If this meeting is held in person, it will occur in a federal government building and attendees must go through a security check to enter the building. Non-U.S. citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–17999 Filed 8–19–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meetings

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocast website *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 13, 2022.

Open: 9:00 a.m.–12:00 p.m., 3:00 p.m.–5:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health NIH, Rockledge I, 6705 Rockledge Drive, Rooms 111A–111B, Bethesda, MD 20892.

Videocast link: *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–Q Bethesda, MD 20892, 301–827–5517, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* and the NIH testing and assessment web page at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/visitor-testing-requirement.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.*) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee

website listed below, for the most up to date guidance as the meeting date approaches.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: August 16, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–17952 Filed 8–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel; RFA–DK21–030: New Investigator Gateway Awards for Collaborative T1D Research Special Emphasis Panel.

Date: October 24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy Plaza Two, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, 6707 Democracy Boulevard, Room 7349, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 17, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18001 Filed 8–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases, Special Emphasis Panel; Development of Medical Countermeasures for Biothreat Agents, Antimicrobial-Resistant Infections and Emerging Infectious Diseases; Research Area 002—Development of Therapeutic Candidates for Biodefense, Antimicrobial Resistant (AMR) Infect.

Date: September 7–8, 2022.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, (301) 761–7106, *mohammed.aiyegbo@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel; NIAID 2022 Omnibus BAA (HHS–NIH–NIAID–BAA2022–1) Research Area 002: Development of Therapeutic Candidates for Biodefense, Antimicrobial Resistant (AMR) Infections and Emerging Infectious Diseases (N01).

Date: September 13–14, 2022.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, (301) 761–7106, *mohammed.aiyegbo@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 16, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18000 Filed 8–19–22; 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: NIGMS Initial Review Group; Training and Workforce Development Study Section—A Review of Pre-doctoral and Medical Scientist Training Program T32 Applications (TWD–A).

Date: October 5–6, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isaah S. Vincent, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, MD

20892, (301) 594–2948, *isaah.vincent@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(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. 2022–18002 Filed 8–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0010]

Certificate of Registration (CBP Forms 4455 and 4457)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 21, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 87 FR 16219) on March 22, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Certificate of Registration.

OMB Number: 1651–0010.

Form Number: CBP Forms 4455 and 4457.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Travelers who do not have proof of prior possession in the United States of foreign made articles and who do not want to be assessed duty on these items can register them prior to departing on travel. In order to register these articles, the traveler must complete CBP Form 4457, *Certificate of Registration for Personal Effects Taken Abroad,* and present it at the port at the time of export for examination of the articles of foreign origin and verification of the description. After the official has signed the document, it will be returned to the applicant for signature, for presentation to CBP upon return to United States, and for subsequent reuse. CBP Form 4457 is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=4457&=Apply.*

CBP Form 4455, *Certificate of Registration,* is used primarily for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, or processing, which will subsequently be returned to the United States either duty free or at a reduced duty rate. The CBP Form 4455 may be required when a person, wishing to claim the status of a nonresident upon arrival for a short visit to the United States before returning abroad, imports articles free of duty under subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). It may also be used for the replacement of articles previously exempted from duty when the unsatisfactory articles are exported under the provisions 9804.00.75 and fall under the $800 or $1,00 exemption limits. The export and return of theatrical scenery, properties, motion-picture films and effects or tools of a trade occupation or employment of domestic or foreign origin must also be reported on CBP Form 4555. The CBP Form 4455, may also be required in any case in which CBP Form 4457 will not adequately serve the purpose of registration. CBP Form 4455 must be presented to CBP for examination of the articles and verification of the articles' description. After the official has signed the document, it will be returned to the applicant for signature, for presentation to CBP upon return to United States, and for subsequent reuse. CBP Form 4455 is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=4455&=Apply.*

CBP Forms 4457 and 4455 are used to provide a convenient means of showing proof of prior possession of a foreign

made item taken on a trip abroad and later returned to the United States. This registration is restricted to articles with serial numbers or other distinctive, permanently affixed unique markings, and are valid for reuse as long as the document legible to identify the registered articles. CBP Forms 4457 and CBP Form 4455 are provided for by 19 CFR 10.8, 10.9, 10.68, 148.1, 148.8, 148.32 and 148.37.

Type of Information Collection: CBP Form 4455.

Estimated Number of Respondents: 60,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 60,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 9,960.

Type of Information Collection: CBP Form 4457.

Estimated Number of Respondents: 140,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 140,000.

Estimated Time per Response: 3 minutes (0.05 hours).

Estimated Total Annual Burden Hours: 7,000.

Dated: August 17, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–18020 Filed 8–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0096]

Transfer of Cargo to a Container Station

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 21, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 17098) on March 25, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Transfer of Cargo to a Container Station.

OMB Number: 1651–0096.

Form Number: N/A.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivering cargo, containerized cargo may be moved from the place of unlading or may be received directly at the container station from a bonded carrier after transportation in-bond. 19 CFR 19.41. This also applies to loose cargo as part of containerized cargo. *Id.* In accordance with 19 CFR 19.42, the container station operator may make a request for the transfer of a container to the station by submitting to CBP an abstract of the manifest for the transferred containers including the bill of lading number, marks, numbers, description of the contents, and consignee.

This information is submitted by members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Transfer of Cargo to Container Station.

Estimated Number of Respondents: 14,327.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Number of Total Annual Responses: 358,175.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 41,548.

Dated: August 16, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–17953 Filed 8–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0NEW]

CBP Hiring Center Medical Records Privacy Act Release Form

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; this is a new collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 21, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 87 FR 14902) on March 16, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: CBP Hiring Center Medical Records Privacy Act Release Form.

OMB Number: 1651–0NEW.

Form Number: Form 3400.

Current Actions: This is a new information collection.

Type of Review: New.

Affected Public: Individuals.

Abstract: In accordance with 5 CFR 339.301, Customs and Border Protection (CBP) performs pre-employment medical evaluations on all candidates tentatively selected to fill positions that include a medical requirement, such as the CBP Officer and Border Patrol Agent positions. During that evaluation process, CBP collects medically relevant information about the candidate from: the candidate, CBP's contracted medical providers, and/or the candidate's personal medical and mental health providers.

In accordance with 5 CFR 339.305, CBP makes all medical documentation and records of examination available to the candidates. Candidates can request copies of their pre-employment medical examination results and supporting documentation/records by email or letter. Due to the sensitive nature of the information being released, CBP requires that candidates complete and sign a privacy release authorization form in order to receive a copy of their medical documents. CBP will only share medical information directly with the candidate, or with a third party when authorized to do so in writing by the candidate.

No specific information is needed to request copies of candidates' medical documents in writing. When completing the release form, candidates must provide the following information: Full name, partial Social Security Number (SSN#), Date of Birth, Current Address, Email Address, Phone Number; as well as specifying the type of medical records to be released (hearing test results, vision test results, etc.).

This information is used by CBP as confirmation that the agency has the candidate's signed authorization to provide medically related records about the candidate. A copy of that signed authorization and the records released are retained within the candidate's pre-employment file.

Type of Information Collection: Medical Records Privacy Act Release Form.

Estimated Number of Respondents: 104.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 208.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 52 hours.

Dated: August 16, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–17954 Filed 8–19–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0064; FXIA16710900000–223–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species and marine mammals. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *https://www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *https://www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Endangered Species

Permit No.	ePermit No.	Applicant	Permit issuance date
82000D		Cherokee Exotic Adventures	4/21/2022
82001D		Cherokee Exotic Adventures	4/21/2022

Marine Mammals

Permit No.	ePermit No.	Applicant	Permit issuance date
02713D		Scot Boyd/Stanford University Medical Center	2/23/2022

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), and their implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–18071 Filed 8–19–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2021–0008; FXIA16710900000–FF09A30000–223]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Nineteenth Regular Meeting; Provisional Agenda; Announcement of Virtual Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) in Panama City, Panama, November 14–25, 2022. Currently, the United States is developing its negotiating positions on proposed resolutions, decisions, and amendments to the CITES Appendices (species proposals), as well as other agenda items that have been submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP19. With this notice, we announce the provisional agenda for CoP19, solicit your comments on the items on the provisional agenda, and announce a virtual public meeting to discuss the items on the provisional agenda.

DATES: *Virtual public meeting:* The virtual public meeting will be held on September 6, 2022, at 1:00 p.m. EDT.

Comment submission: In developing the U.S. negotiating positions on species proposals and proposed resolutions, decisions, and other agenda items submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP19, we will consider written information and comments you submit if we receive them by September 21, 2022.

ADDRESSES: *Virtual public meeting:* The virtual public meeting will be held on the Zoom videoconferencing platform. For more information about the meeting, see ''Announcement of Virtual Public Meeting'' under **SUPPLEMENTARY INFORMATION**.

Comment submission: You may submit comments pertaining to items on the provisional agenda for discussion at CoP19 by one of the following methods:

(1) *Electronically: https://www.regulations.gov.* Follow the instructions for submitting comments on FWS–HQ–IA–2021–0008 (the docket number for this notice).

(2) *U.S. Mail:* Submit by U.S. mail to Public Comments Processing; Attn: Docket No. FWS–HQ–IA–2021–0008; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. Comments and materials we receive, as well as supporting documentation, will be available for public inspection on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and other agenda items, contact Naimah Aziz, Branch Manager, Division of Management Authority, at 703–358–2028 (telephone); 703–358–2298 (fax); or *managementauthority@fws.gov* (email). For information pertaining to species proposals, contact Rosemarie Gnam, Chief, Division of Scientific Authority, at 703–358–1708 (telephone); 703–358–2276 (fax); or *scientificauthority@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are or may be affected by trade and are now, or potentially may become, threatened with extinction. Species are included in the Appendices to CITES, which are available on the CITES Secretariat's website at *https://cites.org/eng/app/appendices.php*.

Currently there are 184 Parties to CITES—183 countries and 1 regional economic integration organization, the European Union. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, as well as resolutions, decisions, and agenda items for consideration by all the Parties.

This is our fourth in a series of **Federal Register** notices that, together with the announced virtual public meeting, provides you with an opportunity to participate in the development of U.S. negotiating positions for the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19). We published our first CoP19-related **Federal Register** notice on March 2, 2021 (86 FR 12199), in which we requested information and recommendations on animal and plant species proposals and proposed resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP19. We published our second CoP19-related **Federal Register** notice on March 7, 2022 (87 FR 12719); that notice described proposed resolutions, decisions, and agenda items that the United States might submit for consideration at CoP19 and provided information on how U.S. nongovernmental organizations can attend CoP19 as observers. In our third CoP19-related **Federal Register** notice, published on April 26, 2022 (87 FR 24577), we responded to recommendations received from the public concerning proposed amendments to the CITES Appendices (species proposals) that the United States might submit for consideration at CoP19 and invited public comments and information on these proposals.

The three prior CoP19 **Federal Register** notices are in the docket (FWS–HQ–IA–2021–0008) at *https://www.regulations.gov.* A link to these notices, along with information on U.S. preparations for CoP19, can also be found at *https://www.fws.gov/program/cites/conference-parties-cites.* Our regulations governing this public process are found in title 50 of the Code of Federal Regulations at 50 CFR 23.87.

On June 17, 2022, the United States submitted to the CITES Secretariat, for consideration at CoP19, its species proposals, proposed resolutions, proposed decisions, and other agenda items. These documents are listed on the CITES Secretariat's website at *https://cites.org/eng/cop19.*

Announcement of Provisional Agenda for CoP19

The provisional agenda for CoP19 is available on the CITES Secretariat's website at *https://cites.org/eng/cop/19/agenda-documents.* The working documents associated with the items on the provisional agenda, including proposed resolutions, proposed decisions, and discussion documents, can be found at that location. To view the working document associated with a particular agenda item, locate the particular agenda item on the provisional agenda, and click on the document link in the column titled ''Files.'' The proposals to amend Appendices I and II can be accessed at *https://cites.org/eng/cop/19/amendment-proposals/provisional.*

Announcement of Virtual Public Meeting

We will hold a virtual public meeting to discuss the items on the provisional agenda for CoP19. The virtual public meeting will be held on the date specified in **DATES**. We will post additional information regarding the virtual public meeting on our website at *https://www.fws.gov/program/cites/conference-parties-cites,* including how to register for the meeting, access the meeting via computer or telephone, and indicate if you intend to provide comments during the meeting. The U.S. Fish and Wildlife Service is committed to providing access to this virtual meeting for all participants, and closed captioning will be provided.

Public Comments

We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Future Actions

Through another notice and website posting in advance of CoP19, we will inform you of the tentative U.S. negotiating positions on species proposals, proposed resolutions, proposed decisions, and agenda items that were submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP19.

Author

The primary author of this notice is Anne St. John, Division of Management Authority, U.S. Fish and Wildlife Service.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on August 11, 2022, for publication. On August 16, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18049 Filed 8–19–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2022–0080; FF09420000/223/FXES111609M0000; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Approval Procedures for Incidental Harassment Authorizations of Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget control number.

DATES: Interested persons are invited to submit comments on or before September 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–IHA'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(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 Office of Management and Budget (OMB) control number.

On January 27, 2022, we published in the **Federal Register** (87 FR 4277) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 28, 2022. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *https://www.regulations.gov* (Docket FWS–HQ–ES–2021–0151) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received 3 comments in response to that notice. None of the comments addressed the information collection requirements; therefore, no response was required.

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: Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region for periods of not more than 1 year. The Service may authorize incidental take by harassment if statutory and regulatory procedures are followed and the Service finds: (i) take is of a small number of marine mammals of a species or stock, (ii) take will have a negligible impact on the species or stock, and (iii) take will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses by Alaska Natives.

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. Harassment means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''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 (the MMPA defines this as ''Level B harassment'').

The terms ''negligible impact,'' ''small numbers,'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* the Service's regulations governing small takes of marine mammals

incidental to specified activities). ''Negligible impact'' is 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. ''Unmitigable adverse impact'' means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impact'' as separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. The Service ensures the least practicable adverse impact through mitigation measures that are effective in reducing the impact of project activities but are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, the Service issues an IHA, which may set forth the following: (i) Permissible methods of taking; (ii) 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 subsistence uses by coastal dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting such take by harassment.

Applicants seeking to conduct activities may request an IHA for the specified activity. If the IHA is issued, the applicants must submit on-site monitoring reports and a final report of the activity to the Secretary.

This is a non-form collection. Applicants must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. These regulations provide the applicant with a detailed description of information the Service needs in order to evaluate the proposed activity and make the required determinations. Specifically, applicants must submit the following information to the Service as part of the IHA application process:

- Describe the specific activity or class of activities that can be expected to result in incidental taking of marine mammals, and
- Provide the dates and duration of such activity and the specific geographical region where it will occur.
- Based on the best available scientific information, each applicant must also:

—Estimate the species and numbers of marine mammals likely to be taken, by age, sex, and reproductive conditions, and the type of taking (*e.g.,* disturbance by sound, injury, or death resulting from collision, etc.) and the number of times such taking is likely to occur;

—Describe the status, distribution, and seasonal distribution (when applicable) of the species or stocks likely to be affected by such activities;

—Describe the anticipated impacts of an activity upon the species or stocks;

—Discuss the anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

- Discuss the anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;
- Describe the anticipated impact of the loss or modification of the habitat on the marine mammal population involved;
- Describe availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;
- Discuss the suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and
- Suggest means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating their effects.

The Service uses the information to draft the proposed IHA, including proposed determinations and mitigation measures to ensure the least practicable adverse impacts on the species or stock and its habitat. Upon IHA issuance, applicants must submit monitoring and final reports indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specified activity. The purpose of monitoring requirements is to assess the effects of project activities on the species or stock, ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and detect any unanticipated effects on the species or stock. Because the length of project activities varies by project (a few weeks to a few months), some projects require weekly reports during project activities.

OMB previously approved information collection requirements associated with incidental take regulations (ITRs) and letters of authorization (LOAs) contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet) under OMB Control Number 1018–0070. Because the ITRs and associated LOAs authorize specific entities to incidentally take marine mammals while engaged in specified activities within a specific geographic region for periods of not more than 5 years, the Service will request a separate OMB control number for information collection requirements associated with IHAs.

Title of Collection: Approval Procedures for Incidental Harassment Authorizations of Marine Mammals (50 CFR 18.27).

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector and State/local/Tribal government.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours
Incidental Harassment Authorization—Application					
Private Sector	4	1	4	50	200
Government	1	1	1	50	50
Incidental Harassment Authorization—Monitoring and Observation Reports					
Private Sector	4	12	48	1.5	72
Government	1	12	12	1.5	18
Incidental Harassment Authorization—Final Report					
Private Sector	4	1	4	5	20
Government	1	1	1	5	5
Totals	15		70		365

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18037 Filed 8–19–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1324]

Certain Mobile Electronic Devices; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 16, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Maxell, Ltd. of Japan. A supplement to the complaint was filed on June 30, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices by reason of the infringement of certain claims of U.S. Patent No. 7,199,821 (''the '821 Patent''); U.S. Patent No. 7,324,487 (''the '487 Patent''); U.S. Patent No. 8,170,394 (''the '394 Patent''); U.S. Patent No. 8,982,086 (''the '086 Patent''); U.S. Patent No. 10,129,590 (''the '590 Patent''); and U.S. Patent No. 10,244,284 (''the '284 Patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 16, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 6, and 7 of the '821 patent; claims 1, 3, and 4 of the '487 patent; claims 2, 4, 5, 7, and 8 of the '394 patent; claims 1, 2, 4, 6, 9–13, and 15 of the '086 patent; claims 1, 5, 9, 11–14, 16–25 of the '590 patent; and claims 1, 3, 4, 7, 9, 10, and 18–20 of the '284 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''certain mobile electronic devices, *i.e.,* Lenovo- and Motorola-branded smartphones'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Maxell, Ltd. 1 Koizumi, Oyamazaki, Oyamazaki-cho Otokuni-gun, Kyoto, 618–8525 Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Lenovo Group Ltd., No. 6 Chuang Ye Road, Haidan District, Shangdi Information Industry Base, Beijing 100085, China

Lenovo (United States) Inc., 1009 Think Place, Morrisville, NC 27650

Motorola Mobility LLC, 600 N. U.S. Highway 45, Libertyville, IL 60048

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Without prejudice to the CALJ's independent determination as to whether to consolidate the present investigation with Certain Mobile Electronic Devices, Inv. No. 337–1312, the present investigation should serve as the lead investigation if the investigations are consolidated.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 16, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–17975 Filed 8–19–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1306 (Review)]

Large Residential Washers From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on large residential washers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on January 3, 2022 (87 FR 115, January 3, 2022) and determined on April 8, 2022, that it would conduct an expedited review (87 FR 38780, June 29, 2022).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on August 16, 2022. The views of the Commission are contained in USITC Publication 5343 (August 2022), entitled *Large Residential Washers from China: Investigation No. 731–TA–1306 (Review).*

By order of the Commission.

Issued: August 16, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–17974 Filed 8–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0025]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Limited Permittee Transaction Report—ATF Form 5400.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *The Title of the Form/Collection:* Limited Permittee Transaction Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 5400.4. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or

households. Other: Business or other for-profit.

Abstract: The Limited Permittee Transaction Report—ATF Form 5400.4 is used to determine if limited permittees have exceeded the number of receipts of explosives materials they are allowed, as well as the eligibility of such persons to purchase explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 100 respondents will respond to this collection six times annually, and it will take each respondent approximately 20 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 100 (total respondents) * 6 (# of response per respondent) * .333333 (20 minutes or the time taken to prepare each response).

(7) *An Explanation of the Change in Estimates:* Due to fewer respondents, the total responses and burden hours were reduced by 50 and 150 hours respectively since the last renewal in 2019. The public cost burden for this information collection also reduced by $65 although the postage rate increased from 55 cents to 58 cents since 2019.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 17, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18039 Filed 8–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0043]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; National Tracing Center Trace Request/ Solicitud de Rastreo del Centro Nacional de Rastreo—ATF Form 3312.1/3312.1 (S)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension with Change of a Currently Approved Collection.

(2) *The Title of the Form/Collection:* National Tracing Center Trace Request/ Solicitud de Rastreo del Centro Nacional de Rastreo.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 3312.1/3312.1 (S). Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government.

Abstract: The National Tracing Center Trace Request/Solicitud de Rastreo del Centro Nacional de Rastreo—ATF Form 3312.1/3312.1 (S) is used by Federal, State, local, and certain foreign law enforcement officials to request that Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) trace firearms used or suspected to have been used in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,153 respondents will complete this form on average 21.24 times per year, and it will take each respondent approximately 6 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 2,449 hours, which is equal to 1,153 (total respondents) * 21.24 (# of response per respondent) * .1 (6 minutes or the time taken to prepare each response).

(7) *An Explanation of the Change in Estimates:* Due to fewer requests for firearms tracing, the total respondents were reduced by 4,950. Consequently, the total responses and burden hours have also reduced by 319,987 and 31,999 hours respectively since the last renewal in 2019.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 17, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18036 Filed 8–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work Application and Job Order Recordkeeping

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 21, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection enables States to comply with regulations under 20 CFR 652 and the Wagner-Peyser Act, as amended. Work applications (commonly referred to as ''registrations'') are used in American Job Centers (AJCs), also known as One-Stop Centers, for individuals seeking assistance in finding employment or employability development services. Job orders are used in AJCs to obtain information on employer job vacancies. Retention of data for three years is necessary (1) to align with other Wagner-Peyser Act requirements, (2) in the event of issues that may arise when information must be verified. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 6, 2022 (87 FR 19976).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Work Application and Job Order Recordkeeping.

OMB Control Number: 1205–0001.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 52.

Total Estimated Annual Time Burden: 416 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: August 8, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–17998 Filed 8–19–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0140]

Proposed Extension of Information Collection; High-Voltage Continuous Mining Machine Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for High-Voltage Continuous Mining Machine Standards for Underground Coal Mines.

DATES: All comments must be received on or before October 21, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0032.
- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

This information collection maintains the safe use of high-voltage continuous mining machine in underground coal mines by requiring records of testing, examination, and maintenance on machine to reduce fire, electrical shock, ignition, and operation hazards.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to High-Voltage Continuous Mining Machine Standards for Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for High-Voltage Continuous Mining Machine Standards for Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0140.

Affected Public: Business or other for-profit.

Number of Respondents: 3.

Frequency: On occasion.

Number of Responses: 4,092.

Annual Burden Hours: 125 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–17997 Filed 8–19–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0001]

Advisory Committee on Construction Safety and Health (ACCSH): Notice of Meetings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of ACCSH Committee and Workgroup meetings.

SUMMARY: The Advisory Committee on Construction Safety and Health (ACCSH) will meet September 14, 2022. ACCSH Workgroups will meet on September 13, 2022.

DATES:

ACCSH meeting: ACCSH will meet from 9:00 a.m. to 5:00 p.m., ET, Wednesday, September 14, 2022.

ACCSH Workgroup meetings: ACCSH Workgroups will meet Tuesday, September 13, 2022. (See ACCSH Workgroup Meetings in the **SUPPLEMENTARY INFORMATION** section of this notice for ACCSH Workgoup meetings scheduled times.)

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the ACCSH meeting by Wednesday, September 7, 2022, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2022–0001), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Please submit requests for special accommodations for this ACCSH meeting by Wednesday, September 7, 2022, to Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH: Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

For copies of this ***Federal Register*** *Notice:* Electronic copies of this **Federal Register** Notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for

Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the CSA and OSHA regulations require the Assistant Secretary to consult with ACCSH before the agency proposes occupational safety and health standards affecting construction activities (40 U.S.C. 3704; 29 CFR 1911.10).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (8/31/2020). ACCSH generally meets two to four times a year.

II. Meetings

ACCSH Meeting

ACCSH will meet from 9:00 a.m. to 5:00 p.m., ET, Wednesday, September 14, 2022. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- Assistant Secretary's agency update and remarks;
- Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings rulemaking update and discussion;
- Discussion of the ANPRM for Occupational Exposure to Lead;
- Directorate of Construction industry update;
- ACCSH Workgroup reports; and
- Public comment period.

ACCSH Workgroup Meetings

In conjunction with the ACCSH meeting, the following ACCSH Workgroups will meet on Tuesday, September 13, 2022. ACCSH Workgroup meetings are open to the public.

- Education and Training 10:00 a.m. to 12:00 p.m.
- Emerging and Current Issues 1:00 p.m. to 3:00 p.m.
- Infrastructure 3:10 to 5:10 p.m.

III. Meeting Information

Public attendance at the ACCSH Committee and Workgroup meetings will be virtual only. Meeting information will be posted in the Docket (Docket No. OSHA–2022–0001) and on the ACCSH web page, *https://www.osha.gov/advisorycommittee/accsh,* prior to the meeting.

Requests to speak and speaker presentations: Attendees who wish to address ACCSH must submit a request to speak, as well as any written or electronic presentation, by Wednesday, September 7, 2022, using the method listed in the **ADDRESSES** section of this notice. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, you may request to address ACCSH briefly during the public-comment period. At her discretion, the ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Docket: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket without change, and those documents may be available online at: *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security Numbers and birthdates. OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the meeting, and other documents pertaining to the ACCSH meeting. These documents are available online at: *http://www.regulations.gov.* To read or download documents in the public docket for this ACCSH meeting, go to Docket No. OSHA–2022–0001 at: *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and copying, when permitted, at the OSHA Docket Office. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the homepage. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through that website and for assistance in using the internet to locate submissions and other documents in the docket.

Authority and Signature

James S. Fredrick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor's Order No. 8–2020 (85 FR 58393), 5 U.S.C. App. 2, and 29 CFR part 1912.

Signed at Washington, DC, on August 16, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–18018 Filed 8–19–22; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Information To Support the Development of a Strategic Plan on Statistics for Environmental-Economic Decisions

AGENCY: Office of Management and Budget.

ACTION: Request for Information (RFI).

SUMMARY: The White House Office of Management and Budget (OMB)—on behalf of the co-chairs of the Interagency Policy Working Group on Statistics for Environmental-Economic Decisions (Working Group), the Office of Science and Technology Policy (OSTP), and Department of Commerce (DOC)—requests information and comments on questions posed by the Working Group to help inform the development of Government-wide natural capital accounts and standardized environmental-economic statistics. The Working Group has developed a draft Strategic Plan that recommends short- and long-term strategic goals, as well as objectives and proposed strategies to achieve a routinely produced set of Government-wide natural capital accounts and standardized environmental-economic statistics that complement and operate in alignment with core national economic accounts and statistics. To support the Strategic Plan, OMB seeks information on likely and potential applications for U.S. natural capital accounts, established statistics and accounts that would strengthen the U.S. system, relevant external factors that may affect implementation of the Strategic Plan, and relevant ancillary or indirect consequences of developing natural capital accounts or associated statistics.

DATES: Interested persons and organizations are invited to submit comments by October 21, 2022.

ADDRESSES: Submit comments through *www.regulations.gov*—a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies

have published in the **Federal Register** and that are open for comment. Enter ''OMB–2022–0009'' (in quotes) in the search box and follow the instructions for submitting comments. Please include the Docket ID (OMB–2022–0009) and the phrase ''RFI-Natural Capital'' at the beginning of your comments. Please also indicate which questions from the *INFORMATION REQUESTED* section of this notice is addressed in your comments.

Comments submitted in response to this notice may be made available to the public and subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket; however, *www.regulations.gov* does include the option of commenting anonymously. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Electronic Availability: **Federal Register** notices are available electronically at *www.federalregister.gov/.* The draft Strategic Plan is available at *https://www.whitehouse.gov/wp-content/uploads/2022/08/Natural-Capital-Accounting-Strategy.pdf.*

Public Review Procedure: All comments and proposals received in response to this notice will be available for public inspection.

Instructions

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. OMB welcomes any responses to inform and guide the work of OMB and the Working Group. Please feel free to respond to one or as many prompts as you choose. Submission should use 12-point or larger font, with a page number provided on each page. Respondents are encouraged, though not required, to include the name of the person(s) or organization(s) filing the comment; the respondent type (*e.g.,* academic, advocacy, professional society, community-based organization, industry, trainee/student, member of the public, government, other); and the respondent's role in the organization (*e.g.,* researcher, faculty, student, program manager, journalist). For comments containing references, studies, research, and other empirical data that are not widely published, respondents are encouraged to include copies or electronic links of the referenced materials, in a machine-readable format to the degree possible. No business proprietary information, copyrighted information, or sensitive personally identifiable information should be submitted in response to this RFI. Please be aware that comments submitted in response to this RFI may be released publicly.

FOR FURTHER INFORMATION CONTACT: For additional information, contact: Andrew Stawasz, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Email: *NaturalCapitalAccounting@omb.eop.gov,* Telephone: (202) 881–7051.

SUPPLEMENTARY INFORMATION:

Background: Existing national economic accounts data for the United States—the organized data describing the U.S. economy, often summarized as Gross Domestic Product (GDP)—provide an incomplete view of the Nation's environmental and natural assets,[1] and the changing value of these important assets remains disconnected from broader economic statistics. As a result, while the Federal statistical system generally reflects how many economic sectors interact, it does not reflect how the environment affects and responds to economic sectors and vice versa.

Natural capital or natural assets, the environmental or ecosystem services they generate, and expenditures to secure and protect nature are foundational elements of economic progress and growth, future opportunity, and sustainable development. Measuring natural assets and maintaining statistical series—that is, conducting repeated measurement over time that relates the environment with the economy—can inform planning tools for the American economy, contributing to goals like job creation and international competitiveness. The international community has demonstrated a growing interest in rapidly developing natural capital accounting methodologies, and the private sector has shown a growing demand for natural capital data to reduce uncertainty and ensure competitiveness. Therefore, there is demand for U.S. Federal leadership to develop natural capital accounts and standardized environmental-economic statistics to provide a centralized domestic framework and to promote international norms.

On Earth Day 2022, the Biden-Harris Administration announced an initiative to develop and maintain the first U.S. natural capital accounts and standardized environmental-economic statistics. An interagency Working Group—co-chaired by OMB, OSTP, and DOC, with participation from the Council of Economic Advisors, Council on Environmental Quality, Domestic Climate Policy Office, National Economic Council, National Security Council, Departments of Agriculture, Interior, Labor, State, and Treasury, Environmental Protection Agency, and National Aeronautics and Space Administration—developed a strategy for producing natural capital accounts that work within the U.S. standard national accounting system. These natural capital accounts would be able to measure the economic value that natural assets provide to society.

The Working Group has developed a Strategic Plan divided into five main sections:

(1) *The Need for a System of Statistics for Environmental-Economic Decisions* details how the development of natural capital accounts and standardized environmental-economic statistics are expected to contribute to sustainable development of the U.S. macro-economy; encourage more informed Federal decision-making; increase the competitiveness of American firms; and support enhanced resilience of states, communities, territories, and tribes.

(2) *Renewing U.S. Leadership and Building on Strength* outlines the importance of U.S. leadership in environmental-economic statistics and describes the history of the development of environmental-economic statistics in the United States.

(3) *Connecting Natural Capital and Environmental-Economic Statistics with National Economic Accounts* provides systematic recommendations for the development of natural capital accounts and environmental-economic statistics, placing them in the context of the U.S. statistical system and in the context of the development of international standards.

(4) *Developing a U.S. System of Statistics for Environmental-Economic Decisions: Targets, Timelines, and Tasks* identifies headline summaries and products, the pathway to production-grade accounts and core statistical products, supporting activities necessary to develop and

[1] Environmental or natural assets are durable physical or biological elements of nature that persist through time to contribute to current or future economic production, human enjoyment, or other services people value.

manage the system, the environmental sectors the working group recommends be developed into natural capital accounts, a proposed timeline for developing individual accounts (*e.g.,* an air account, a land account), and additional research and guidance needs. This section also identifies the data and expertise within the U.S. Government needed to produce sustained natural capital accounts and environmental-economic statistics.

(5) *Administrative Coordination Across the Government* details how interagency coordination for developing the initiative would be carried out by the Chief Statistician of the United States and processes to facilitate data sharing to ensure interoperability across the Federal Government. This section also summarizes the legal authority for developing natural capital accounts and standardized environmental-economic statistics.

This request for information aims to support the Working Group's continued effort to develop and implement a strategy for developing statistics for environmental-economic decisions. OMB is interested in hearing from a diversity of stakeholders, sectors, and members of the public.

Information Requested

OMB is issuing this notice in order to facilitate robust interaction with the public on this new U.S. Government endeavor. Input is welcome from stakeholders and members of the public representing all backgrounds and perspectives. Through this RFI, OMB seeks information and feedback on the Strategic Plan for Statistics for Environmental-Economic Decisions in order to realize natural capital accounts and associated environmental-economic statistics, including on the following topics:

- Likely and potential applications for U.S. natural capital accounts and associated environmental-economic statistics that would improve government or private-sector decision making that are not described in the draft Strategic Plan;
- Comments related to established and widely recognized systems of environmental-economic statistics or natural capital accounts that could strengthen the U.S. system;
- External factors that may affect the Federal Government's ability to implement the Strategic Plan; and
- Ancillary or indirect consequences of developing natural capital accounts or associated environmental-economic statistics.

K. Sabeel Rahman,

Senior Counselor, Office of Information and Regulatory Affairs.

[FR Doc. 2022–17993 Filed 8–18–22; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–061)]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of membership of SES Performance Review Board.

The Civil Service Reform Act of 1978, requires that appointments of individual members to the Performance Review Board (PRB) be published in the **Federal Register**.

The performance review function for the SES in NASA is being performed by the NASA PRB. The following individuals are serving on the Board:

Performance Review Board

Chairperson, Associate Administrator
Deputy Associate Administrator for Business Operations
Chief Human Capital Officer
Director for Executive Services
Associate Administrator for the Office of Diversity and Equal Opportunity
Associate Administrator for the Space Technology Mission Directorate
Chief Financial Officer
Center Director, Kennedy Space Center

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–17940 Filed 8–19–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–062]

Freedom of Information Act (FOIA) Advisory Committee Meetings

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meetings.

SUMMARY: We are announcing upcoming Freedom of Information Act (FOIA) Advisory Committee meetings in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meetings will be on Thursday, September 8, 2022, from 10 a.m. to 12 p.m. EDT, and Wednesday, September 14, 2022, from 10 a.m. to 12 p.m. EDT. You must register by:

- 11:59 p.m. EDT September 6, 2022, to attend the September 8, 2022, meeting
- 11:59 p.m. EDT September 12, 2022, to attend the September 14, 2022, meeting

Location: These meetings will be virtual meetings. We will send access instructions for each meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION: *Agendas and meeting materials:* We will post all meeting materials at *https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term.* These meetings will be the first of the 2022–2024 committee term. The purpose of the September 8, 2022, meeting will be to introduce the members and the work of the Committee. The purpose of the September 14, 2022, meeting will be to establish subcommittees and, for each subcommittee, select co-chairs (one government co-chair and one non-government co-chair).

Procedures: These virtual meetings are open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). If you wish to offer oral public comments during the public comments periods of the meetings, you must register in advance through this Eventbrite link *https://foiaac-mtg-sept-8-2022.eventbrite.com* for the September 8, 2022 meeting, and through this Eventbrite link *https://foiaac-mtg-sept-14-2022.eventbrite.com* for the September 14, 2022 meeting. You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. To request additional accommodations (*e.g.,* a transcript or closed captioning), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should

contact Kirsten Mitchell (contact information listed above).

Tasha Ford,

Committee Management Officer.

[FR Doc. 2022–18035 Filed 8–19–22; 8:45 am]

BILLING CODE 7515–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Appointment of Members of Senior Executive Service Performance Review Board

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of appointments.

SUMMARY: Notice is hereby given of the names of members of the Office of National Drug Control Policy (ONDCP) Performance Review Board (PRB). The members of the PRB for ONDCP are: Ms. Martha Gagné (as Chair), Mr. David Holtgrave, Mr. Eric Talbot, and Ms. Michele Marx.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Robert Kent, General Counsel, (202) 395–6745, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The authority for this notice is 5 U.S.C. 4314(c), which requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

Dated: August 17, 2022.

Robert Kent,

General Counsel.

[FR Doc. 2022–18022 Filed 8–19–22; 8:45 am]

BILLING CODE 3280–F5–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Subject 30-Day Notice for the ''Regional and State Arts Agency ARP Funding Survey''; Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection for the Regional and State Arts Agency American Rescue Plan (ARP) Funding Survey. Copies of the ICR, with applicable supporting documentation, may be obtained by vising *www.Reginfo.gov.*

DATES: Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''National Endowment for the Arts'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, comments can be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Regional and State Arts Agency ARP Funding Survey.

OMB number: 3135–0144.

Frequency: One-time web survey.

Affected public: States arts agencies and regional arts organizations staff members.

Estimated number of respondents: 62.

Total burden hours: 279 hours (62 responses, average 4.5 hours).

Total annualized capital/startup Costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $25,000.

Description

The planned data collection is a new information collection request, and the data to be collected are not available elsewhere unless obtained through this information collection. The web-based survey is planned to be administered once during winter 2023, contingent upon OMB approval. Knowledge gained through this information collection will enable the NEA to collect information on emergency relief funding provided by the American Rescue Plan (ARP) to state and regional subgrantees from the NEA. Currently, the NEA does not collect any information about the benefits of ARP funding awarded to states and regions.

The NEA is compelled by Congress to obligate 40 percent of its program budget to state arts agencies and regional arts organizations through Partnership Agreements (20 U.S.C. 954(g)). In turn, state arts agencies and regional arts organizations use these funds to support state and regional grantmaking and other programming, ''developing projects and productions in the arts in such a manner as will furnish adequate programs, facilities, and services in the arts to all the people and communities in each of the several States'' (20 U.S.C. 954. (g)(1)). ARP funds were administered to state arts agencies and regional art organizations via amendments to FY 2021 Partnership Agreements.

For regular Partnership Agreements, states and regional jurisdictions are

required to annually report subgrantee data to the NEA via Final Descriptive Reports (OMB Control Number 3135–0140). However, Final Descriptive Reports do not request data related to jobs and infrastructure investments, which were the primary purpose of ARP funds to state arts agencies and regional arts organizations. In an effort to understand the benefits and outcomes of emergency relief funds going to the 56 states and jurisdictions, and six regions, the NEA is partnering with National Assembly of State Arts Agencies (NASAA) to collect data on the how subgrantees used ARP funds.

The Regional and State Arts Agency ARP Funding Survey is modeled after the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Funding Survey approved by OMB under this OMB Control Number (see ICR Ref. No. 202105–3135–001) and administered by the NEA in partnership with NASAA in 2020. The two surveys are identical with the exception that programmatic information, like grant program name and description, has been updated in the Regional and State Arts Agency ARP Funding Survey to include ARP, not CARES Act information. The intent of both surveys is to assess how federal Covid–19 relief funding from the NEA supported the continuation or creation of jobs and investment in infrastructure for state and regional subgrantees. Administering the survey will allow the NEA to again report on the outcomes of the relief funds that were distributed to states arts agencies and regional arts organizations.

The NEA's Office of Research & Analysis decided to survey state arts agencies and regional arts organizations because it would fill a gap in knowledge of the 40 percent of ARP funding allocated to states and regions. The questions in the survey will capture the jobs subgrantees were able to maintain or create, and the amount invested in infrastructure, as a result of ARP emergency relief. The survey will also provide an opportunity for state arts agencies and regional arts organizations to share additional qualitative or quantitative subgrantee data related to ARP funding they collected. The information will allow the NEA to examine the outcomes of ARP funds on subgrantees of state arts agencies and regional arts organizations to understand how these funds were used to support arts organizations and benefit the public.

NASAA will report the survey data to the public in the aggregate and include an analysis of subgrantee data along with direct grantee data to understand and track outcomes of ARP funding. The primary indicators will be the number of jobs created or maintained by grantees and subgrantees (full-time and part-time), and the infrastructure supported with ARP funds.

Dated: August 16, 2022.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2022–17984 Filed 8–19–22; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–0320; NRC–2022–0156]

TMI–2 Solutions, LLC; Three Mile Island Station, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Possession Only License (POL) No. DPR–73, issued to TMI–2 Solutions, LLC (TMI–2 Solutions) for Three Mile Island Station, Unit No. 2 (TMI–2). Pursuant to NRC regulations, TMI–2 Solutions proposes an amendment to the POL for TMI–2. This proposed license amendment request (LAR), upon approval, would revise the POL and the associated Technical Specifications (TS) to support the transition of TMI–2 from Post Defueled Monitoring Storage (PDMS) to that of a facility undergoing decommissioning. The proposed amendment would revise the POL and TS to support Phase 1b and Phase 2 decommissioning activities associated with achieving the removal of all debris material,[1] its transfer to dry cask storage at an Independent Spent Fuel Storage Installation or to a suitable waste storage area, and the relocation of various requirements and the sealed sources TS to the TMI–2 Decommissioning Quality Assurance Plan (DQAP). For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Submit comments by September 21, 2022. Requests for a hearing or petition for leave to intervene must be filed by October 21, 2022. Any potential party as defined in Section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by September 1, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0156. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amy Snyder, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6822, email: *Amy.Snyder@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0156 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0156.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

[1] Debris material is defined by the licensee as pieces of spent nuclear fuel, damaged core material, and high-level waste (collectively called, ''Debris Material'').

''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0156 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to POL No. DPR–73, issued to TMI–2 Solutions for TMI–2 located in Dauphin County, Pennsylvania.

By letter dated February 19, 2021, as supplemented on May 5, 2021, January 7, 2022, March 23, 2022, April 7, 2022, and May 16, 2022, TMI–2 Solutions, submitted a LAR seeking NRC review and approval of an amendment request to the POL and Appendix A, TS, of POL No. DPR–73 for TMI–2. In its application, TMI–2 Solutions states that the revised TMI–2 POL and TS applicable during decommissioning are referred to as the Decommissioning TS. This amendment, if approved, would revise the POL and the associated TS to support the transition of TMI–2 from a PDMS condition to that of a facility undergoing radiological decommissioning using the DECON method pursuant to 10 CFR 50.82(a)(7).

The licensee proposes to eliminate those TS that are no longer applicable based on current plant radiological conditions and updated safe fuel mass limits. The licensee also proposes changes to TS limiting conditions for PDMS, definitions, surveillance requirements, and administrative controls, as well as several license conditions. Upon issuance, this proposed amendment will modify the 10 CFR part 50 license and the TS to support entry into DECON. TMI–2 Solutions intends to complete decommissioning of TMI–2 and release the site by 2037, except for an area set aside, as may be required, for debris material storage facilities.

TMI–2 Solutions also proposes to relocate administrative controls from Section 6, ''Administrative Controls,'' to the DQAP, and to subsequently control them in accordance with 10 CFR 50.54(a) pursuant to the criteria contained in 10 CFR 50.36 and in accordance with the recommendations, guidance, and purpose of NRC Administrative Letter 95–06. TMI–2 Solutions proposes to relocate the content of these administrative controls into the DQAP verbatim except for TS sectional cross references.

Before issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

The NRC has made a proposed determination that the LAR involves NSHC. Under the NRC's regulations in 10 CFR 50.92, ''Issuance of amendment,'' this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee provided an analysis of the issue of NSHC. The NRC staff reviewed this analysis and provided its preliminary evaluation of it below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise the TMI–2 POL and TS by deleting or modifying certain portions of the TS that are no longer applicable to TMI–2 as it transitions from PDMS to decommissioning. These changes are consistent with the criteria set forth in 10 CFR 50.36 for the contents of TS.

Following Phase 1a of decommissioning, TMI–2 will enter Phase 1b and Phase 2 of decommissioning. During Phase 1b and Phase 2, major decommissioning activities as defined in 10 CFR 50.2 will be performed. Based on preliminarily evaluating the licensee's LAR, as supplemented, the NRC preliminarily concludes that none of the events evaluated would exceed the applicable limits of 10 CFR 100.11 and the Environmental Protection Agency (EPA) Protective Action Guides (PAGs) and that there are no postulated accidents that can occur at the TMI–2 facility during Phase 1b or Phase 2 of decommissioning that would result in the dose at the site boundary exceeding the limits of 10 CFR 100.11 and the EPA PAGs including such times as when the containment engineered access equipment hatch is open. The NRC staff has requested additional information (July 29, 2022) regarding the uncertainty in the licensee's accident analysis so that it can complete its safety review and make a final determination regarding NSHC.

As part of the review of the LAR, as supplemented, the NRC staff preliminarily agrees with TMI–2 Solutions' conclusions that the deletion of TS 3/4.1, ''Containment'', does not cause a change in facility conditions, design function, or analysis that verifies the ability of System Structures and Components (SSCs) to perform a design function. During Phase 1b and Phase 2 of decommissioning, the Radiation Protection Program and associated implementing procedures will provide the controls necessary to manage residual contamination. Therefore, it is reasonable to preliminarily conclude that containment will continue to function as a contamination barrier. TMI–2 Solutions states in its February 19, 2021, application that airborne radiation monitoring will be provided at the engineered containment openings. Also, TMI–2 Solutions states that procedures will be used to control routine containment access. Because TMI–2 Solutions commits to have engineered openings in containment, the reactor building breather (vent) would no longer provide a preferred

path to the atmosphere. TMI–2 Solutions states in its February 19, 2021, application that it will not take any credit for the containment as a pressure containing boundary and therefore unfiltered leak rate testing of the containment is no longer applicable.

Also, in its May 16, 2022, supplement, TMI–2 Solutions states that the basic changes in the reactor building in going from PDMS to DECON are removal of the Equipment Hatch, squaring off of the hole left from equipment hatch removal, and installation of a barrier at the interface between the reactor building and the outside structure. Further, TMI–2 Solutions states in its May 16, 2022, supplement that credit is being taken for the reactor building as a passive radiological barrier to the extent that the door between the reactor building and the outside structure would only be open for the period of time necessary to allow passage of material or personnel between the two structures. TMI–2 Solutions states in its May 16, 2022, supplement that during DECON, other openings may be made in the containment structure. For openings, TMI–2 Solutions states it will follow good ALARA practices by ensuring that these openings will also include passive radiological barriers. Additionally, TMI–2 Solutions explains that during normal operation, any air flow would be into containment due to operation of the Reactor Building Purge Exhaust System.

In its May 16, 2022, supplement, TMI–2 Solutions states that the most limiting scenario is a reactor building fire, which is not based on any specific event. Its main purpose is to demonstrate that even if high efficiency particulate air [filter] (HEPA) filtration was bypassed, the event would not exceed 100 mrem to the maximally exposed individual, the standard for declaring a Site Area Emergency at an operating nuclear power plant. In its May 16, 2022, supplement, TMI–2 Solutions states that it has reanalyzed the reactor building fire scenario to demonstrate the additional margin that exists. The calculation incorporated a more appropriate fractional airborne release factor as used in NUREG/CR–0130.

The NRC staff preliminarily concludes that the deletion of TS 3/4.2, ''Reactor Vessel Fuel,'' does not cause a change in facility conditions, design function, or analysis that verifies the ability of SSCs to perform a design function and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3/4.3, ''Crane Operations,'' prohibits loads over 50,000 lbs. from travel over the Reactor Vessel (RV). The licensee indicates in its NSHC (February 19, 2021, submittal) that the deletion of TS 3/4.3 does not cause a change in facility conditions, design function, or analysis that verifies the ability of SSCs to perform a design function. In its February 19, 2021, LAR, TMI–2 Solutions states that PDMS TS requirements associated with this TS are not applicable in Phase 1b and Phase 2 of decommissioning because there are no limiting conditions for the license. Also, TMI–2 Solutions explains in its LAR, as supplemented, that TS 3/4.3, ''Crane Operations,'' is not relevant because none of the four requirements in 10 CFR 50.36(c)(2)(ii) are applicable, based on its evaluation provided in Section 3.1, ''Applicable Regulatory Requirement,'' of its LAR (February 19, 2022). The NRC staff reviewed this section of the application and preliminarily agrees with TMI–2 Solutions for the following reasons: (1) TMI–2 does not have a reactor coolant pressure boundary; therefore, the requirements of Criterion 1 of 10 CFR 50.36(c)(2)(ii)(A) are not applicable; (2) TMI–2 is no longer licensed to operate therefore the requirements of Criterion 2c of 10 CFR 50.36(c)(2)(ii)(B) is not applicable; (3) TMI–2 cranes do not provide a function required to mitigate the effect of unanticipated occurrences such as fire; and (4) There are no TS associated with Phase 1b or Phase 2 other than annual effluent monitoring reporting, hence there are no limiting conditions for operation.

In its LAR, TMI–2 Solutions states that the PDMS TS requirements associated with TS 3/4.3 ''Crane Operations,'' are not applicable in Phase 1b and Phase 2. TMI–2 Solutions also states that TS 3/4.3 does not satisfy any of the four requirements established in 10 CFR 50.36(c)(2)(ii) and provides its reasons for its conclusions. Further, TMI–2 Solutions argues, because of the above, it is not required to have a hoisting and rigging program but has elected to develop one to address movement of loads at TMI–2 because it will provide a high degree of assurance that a load drop will not occur. The NRC staff preliminarily concludes that the hoisting and rigging program will serve the same purpose as the TS, as applicable to decommissioning. Further, TMI–2 Solutions commits to prepare lift plans for all non-standard lifts, as directed by the hoisting and rigging program. TMI–2 Solutions, in its LAR, as supplemented, explains that the purpose of the hoisting and rigging program is to define the minimum requirements for the safe operations of cranes and hoists. Also, TMI–2 Solution indicates that the hoisting and rigging program will provide detailed requirements for training and qualification of personnel, inspection and maintenance of cranes or hoists, the safe use of rigging equipment as well as direction for performing non-standard lifts to ensure that lifting operations are performed in a safe manner. Based on its review of the LAR, as supplemented, the NRC staff preliminarily agrees with TMI–2 Solutions' conclusion that the use of the hoisting and rigging program provides a defense-in-depth approach to preventing a load drop from occurring. TMI–2 Solutions states in its LAR that crane design features such as load cells, and travel stops will be used, as required by the hoisting and rigging program, to ensure safe travel paths and barriers will be provided as per the lift plan, as required, to preclude the effects of a load drop.

TMI–2 Solutions submitted a calculation (Attachment 5 of its February 19, 2021, submittal, as supplemented on April 7, 2022) that assesses increasing the Safe Fuel Mass Limit (SFML) from 42 kg to approximately 1200 kg. The analysis states that it is not credible to have 1200 kg U in an idealized configuration for criticality to occur during Phase 1b or Phase 2 of decommissioning. TMI–2 Solutions explains that there are no credible operational upsets to realize the ideal configuration. TMI–2 Solutions concludes that even if the upset occurred, it would require fissile mass in excess of that analyzed, which is in excess of what could occur. The NRC staff reviewed this analysis, finds its assumptions reasonable, and therefore, preliminarily agrees with this conclusion. Therefore, based on its review described above, the NRC staff preliminarily concludes that the deletion of TS 3/4.3 ''Crane Operations'' does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TMI–2 Solutions in its LAR proposes to delete TS definitions and rules of usage and application that will not be applicable during Phase 1b and Phase 2 decommissioning and concludes that these changes have no impact on facility SSCs or the methods of operation of such SSCs. Based on the NRC staff's review of the LAR, the NRC staff preliminarily concludes that the proposed relocation of certain administrative requirements as allowed by Administrative Letter 95–06 (Reference 6) would not affect operating procedures or administrative controls

that have the function of ensuring the safe management of debris material or decommissioning of the facility. Therefore, the NRC staff preliminarily concludes that the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The NRC staff preliminarily concludes that the proposed changes to delete and/or modify the TS would not create the possibility of a new or different kind of accident from that previously evaluated. The removal of the TS applicable in Phase 1a of decommissioning cannot result in different or more adverse accidents than previously evaluated because there are no new credible failure mechanisms, or accident initiators not considered in the design and licensing basis for Phase 1b of decommissioning. Following Phase 1a of decommissioning, TMI–2 will enter Phase 1b and Phase 2 of decommissioning. During Phase 1b and Phase 2, major decommissioning activities as defined in 10 CFR 50.2 will be performed. As discussed in Attachment 1 to TMI–2 Solutions' May 16, 2022, supplement, a reactor building fire has been evaluated and determined to be the accident that could occur during decommissioning that would maximize dose at the site boundary. TMI–2 Solutions states that the reactor building fire is the most limiting scenario and it is not based on any specific event. Its main purpose is to demonstrate that even if HEPA Filtration was bypassed, the event would not exceed 100 mrem to the maximally exposed individual, the standard for declaring a Site Area Emergency at an operating nuclear power plant. In Attachment 2 of the May 16, 2022, supplement, TMI–2 has reanalyzed the reactor building fire scenario to demonstrate the additional margin that exists. TMI–2 Solutions states in its May 16, 2022, supplement that the calculation incorporated a more appropriate fractional airborne release factor as used in NUREG/CR–0130. TMI–2 states in its LAR, as supplemented, that there are no postulated accidents that can occur at the TMI–2 facility during Phase 1b or Phase 2 of decommissioning that would result in the dose at the site boundary exceeding the limits of 10 CFR 100.11 and the EPA PAGs including such times as when the containment engineered access equipment hatch is open. Further, the NRC staff notes that the TMI–2 Radiation Protection Program would identify the controls that will be implemented through procedures during decommissioning and decontamination activities occurring inside of the reactor building.

The use of these Radiation Protection Program implementing procedures take into account detailed work planning and execution of the decommissioning and decontamination work and support activities, including measures to maintain occupational dose As Low As Reasonably Achievable and below the occupational dose limits in 10 CFR part 20 during decommissioning. TMI–2 Solutions states in its LAR, as supplemented, that procedures associated with Phase 1b of decommissioning will be developed to retrieve the remaining core debris or debris material and decontaminate high radiation areas. TMI–2 Solutions also commits that it will develop appropriate procedures for Phase 2.

The NRC staff reviewed this analysis, finds its assumptions reasonable, and therefore, preliminarily agrees with the TMI–2 Solutions conclusion that the deletion of TS 3/4.1 ''Containment'' does not cause a change in facility conditions, nor does it cause a change in design function. TMI–2 Solutions notes in its application that the function of the containment—to maintain the isolation of residual contamination during Phase 1a decommissioning—remains unchanged. The NRC staff preliminarily agrees that during Phase 1b and 2 of decommissioning, the Radiation Protection Program and associated implementing procedures will provide the controls necessary to manage residual contamination and that the containment would continue to function as a contamination barrier. TMI–2 Solutions states in its application that airborne radiation monitoring will be provided at the engineered containment openings (*e.g.,* Equipment Hatch Opening) and that procedures will be used to control routine containment access. With the construction of the engineered openings in containment, the NRC staff preliminarily agrees with TMI–2 Solutions that the reactor building breather (vent) no longer provides a preferred path to the atmosphere. TMI–2 Solutions explains in its February 19, 2021, application that no credit is taken for the containment as a pressure containing boundary and therefore unfiltered leak rate testing of the containment is no longer applicable.

The NRC staff preliminarily concludes that the dose at the site boundary associated with the events described in Attachment 1 to TMI–2 February 19, 2021, LAR, as supplemented on May 16, 2022, does not exceed the requirements of 10 CFR 100.11, as well as the EPA PAGs. The NRC staff preliminarily agrees with TMI–2 Solutions that the deletion of TS 3/4.1 ''Containment'' would not create the possibility of a new or different kind of accident from any accident previously evaluated relative to Phase 1b or Phase 2 of decommissioning.

TS 3/4.2 ''Reactor Vessel Fuel'' establishes a SFML for the PDMS condition, which ensures that the amount of core debris that may be removed from the RV or rearranged in the RV during PDMS does not exceed 42kg. This SFML limit is specified to ensure subcriticality even after dual errors.

The NRC preliminarily agrees that the deletion of TS 3/4.2 does not cause a change in facility conditions, nor does it cause a change in design function. TMI–2 Solutions provides a calculation in Attachment 5 of its February 19, 2021, LAR, as supplemented on April 7, 2022, stating that this calculation provides the basis to increase the SFML from 42 kg to 1200 kg. Also, TMI–2 Solutions states that the result of this calculation demonstrates that the entire mass of the core debris material cannot be configured into an arrangement whereby a criticality event is possible and that K_{eff} could not exceed 0.95. The NRC staff reviewed this analysis, finds its assumptions reasonable, and therefore, preliminarily agrees with this conclusion.

Therefore, the NRC staff preliminarily agrees that the deletion of TS 3/4.2 ''Reactor Vessel Fuel'' does not create the possibility of a new or different kind of accident from any accident previously evaluated relative to Phase 1b or Phase 2 of decommissioning.

During PDMS, loads over 50,000 lbs. are prohibited from travel over the RV. The NRC staff preliminarily concludes that the deletion of TS 3/4.3 ''Crane Operations'' would not cause a change in facility conditions, nor does it cause a change in design function. As discussed in Section 2 ''Detailed Description and Basis for The Changes,'' of the February 19, 2021, submittal for Phase 1b and Phase 2 of decommissioning, TMI–2 Solutions states it will develop a hoisting and rigging program that addresses movement of loads at TMI–2. Also, TMI–2 Solutions explains in its LAR that this program will define the minimum requirements for the safe operations of cranes and hoists. Also, TMI–2 explains that this program will provide detailed requirements, as

applicable, for training and qualification of personnel, inspection and maintenance of cranes or hoists, the safe use of rigging equipment as well as direction for performing non-standard lifts to ensure that lifting operations are performed in a safe manner. TMI–2 Solutions indicates in its February 19, 2021, application that it will develop lift plans for all lifts as directed by the hoisting and rigging program where a load drop or load impingement could contribute to release or dispersal of radioactive material to the environment which could exceed threshold for an unusual event.

The NRC staff preliminary agrees with TMI–2 Solutions statement that the hoisting and rigging program provides a defense in depth approach to preventing a load drop from occurring. TMI–2 Solutions commits to use, as required by the hoisting and rigging program, crane design features such as load cells, and travel stops, to ensure safe travel paths. TMI–2 Solutions commits to provide barriers as required to preclude the effects of a load drop.

A calculation has been performed by TMI–2 Solutions (Attachment 5 of the February 19, 2021, submittal and as supplemented on April 7, 2022) that assesses increasing the SFML from 42 kg to approximately 1200 kg. The analysis states that it is not credible to have 1200 kg U in an idealized configuration for criticality to occur during Phase 1b or Phase 2 of decommissioning and that there are no credible operational upsets to realize the ideal configuration but even in the event that the upset occurs, it would require fissile mass in excess of that analyzed, which is in excess of what could occur, in addition to a greatly reduced impurity concentration to present a criticality hazard. Therefore, NRC preliminarily concludes that the deletion of TS 3/4.3 ''Crane Operations'' does not create the possibility of a new or different kind of accident from any accident previously evaluated relative to Phase 1b or Phase 2 of decommissioning.

The TMI–2 sealed sources are maintained at Three Mile Island Station, Unit No. 1 (TMl-1) and managed by Constellation Energy, LLC under a program compliant with the requirements of 10 CFR 70.39(c). Therefore, deleting TS 3/4.4 ''Sealed Sources'' from the TMI–2 TS and relocating the TS requirements to the DQAP, as noted in TMI–2 Solutions January 7, 2022, supplement, does not create the possibility of a new or different kind of accident from any accident previously evaluated relative to Phase 1b or Phase 2 decommissioning.

Based on the above, the NRC staff preliminarily concludes that the proposed changes will not create the possibility of a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the licensing bases documents. Further, the NRC preliminarily concludes that decommissioning operations in Phase 1b and Phase 2 decommissioning are bounded by the events described in Attachment 1 of the February 19, 2021, submittal, as supplemented on May 16, 2022.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes would revise the TMI–2 POL and TS by deleting or modifying certain portions of the TS that are no longer applicable to TMI–2 as it transitions from PDMS to decommissioning. These changes are consistent with the criteria set forth in 10 CFR 50.36 for the contents of TS.

The Phase 1a decommissioning condition is a continuation of the PDMS condition. No major decommissioning activities will occur in Phase 1a. During Phase 1a of decommissioning, containment isolation assures that the containment continues to perform as a contamination barrier preventing residual contamination from release from inside the containment.'' TMI–2 Solutions, explains in Section 2 ''Detailed Description and Basis for the Changes'' of its February 19, 2021, application, as supplemented on May 16, 2022, that the radiological consequences associated with the ''fire inside containment'' unanticipated event, does not exceed the applicable limits of 10 CFR 100.11 and the EPA PAGs.

Following Phase 1a, TMI–2 will enter Phase 1b and Phase 2 of decommissioning. During Phase 1b, major decommissioning activities as defined in 10 CFR 50.2 will be performed. Based on the consequences of the postulated events in Attachment 2 of TMI–2 Solutions February 19, 2021, application, as supplemented on May 16, 2022, TMI–2 Solutions concludes that none of the events evaluated involve a significant reduction in a margin of safety.

TMI–2 Solutions states in its February 19, 2021, application that there are no postulated accidents that can occur inside of the reactor building during Phase 1b or Phase 2 that result in the dose at the site boundary exceeding the limits of 10 CFR 100.11 and the EPA PAGs including such times as when the containment engineered access equipment hatch is open.

TMI–2 Solutions states in its LAR, that during Phase 1a of decommissioning, isolation assures that the containment continues to perform as a contamination barrier preventing residual contamination from release from inside the containment.TMI–2 states in its February 19, 2021, application, as supplemented on May 16, 2022, that there are no postulated accidents that can occur inside of the reactor building during Phase 1b or Phase 2 of decommissioning that result in the dose at the site boundary exceeding the limits of 10 CFR 100.11 and the EPA PAGs including such times as when the containment engineered access equipment hatch is open. Further, the NRC staff notes that the TMI–2 Radiation Protection Program will identify the controls that will be implemented through procedures during decommissioning and decontamination activities occurring inside of the reactor building. The use of these Radiation Protection Program implementing procedures takes into account detailed work planning, and execution of the decommissioning and decontamination work and support activities, including measures to maintain occupational dose As Low As Reasonably Achievable and below the occupational dose limits in 10 CFR part 20 during decommissioning. TMI–2 Solutions states in its LAR that procedures associated with Phase 1b of decommissioning will be developed to retrieve the remaining core debris and decontaminate high radiation areas. TMI–2 Solutions also commits that it will develop appropriate procedures for Phase 2.

TMI–2 Solutions concludes that the deletion of TS 3/4.1 ''Containment'' does not exceed or alter a design basis or safety limit. The function of the containment is to confine residual radioactivity that otherwise might be released to the atmosphere during reactor building decommissioning. The NRC staff reviewed this analysis, finds its assumptions reasonable, and therefore, preliminarily agrees with TMI–2 Solutions' conclusions that the deletion of TS 3/4.1 ''Containment'' does not significantly reduce the margin of safety during Phase 1b and Phase 2.

Also, the NRC staff preliminarily agrees that during Phase 1b and 2 of decommissioning, the Radiation Protection Program and associated implementing procedures will provide the controls necessary to manage residual contamination and that the containment would continue to function as a contamination barrier. TMI–2

Solutions states in its application that airborne radiation monitoring will be provided at the engineered containment openings (*e.g.,* Equipment Hatch Opening) and that procedures will be used to control routine containment access. With the construction of the engineered openings in containment, the NRC staff preliminarily agrees with TMI–2 Solutions that the reactor building breather (vent) no longer provides a preferred path to the atmosphere. TMI–2 Solutions explains in its February 19, 2021, application, as supplemented on May 26, 2022, that no credit is taken for the containment as a pressure containing boundary, and therefore, unfiltered leak rate testing of the containment is no longer applicable.

The NRC staff preliminarily agrees with the licensee's NHSC conclusion in its LAR that the dose at the site boundary associated with the events described in Attachment 1 to TMI–2 February 19, 2021, application, as supplement on May 26, 2022, does not exceed the requirements of 10 CFR 100.11, as well as the EPA PAGs. The NRC staff preliminarily agrees with TMI–2 Solutions that the deletion of TS 3/4.1 ''Containment'' is appropriate for the reasons stated above. Therefore, the NRC staff preliminarily concludes that deletion of TS 3/4.1 ''Containment'' does not significantly reduce the margin of safety during Phase 1b and Phase 2.

TS 3/4.2 ''Reactor Vessel Fuel'' establishes a SFML for the PDMS condition, which ensures that the amount of core debris that may be removed from the RV or rearranged in the RV during PDMS does not exceed 42 kg. This SFML limit is specified to ensure subcriticality even after dual errors. TMI–2 Solutions provides a calculation in Attachment 5 of its February 19, 2021, application, supplemented on April 7, 2022, which it states provides the basis to increase the SFML from 42 kg to 1200 kg. TMI–2 Solutions states that the current SFML was developed based solely on credible upper bounds for input parameters as opposed to sample data or realistic conditions. TMI–2 Solutions based the proposed revision to the SFML upon existing data and known conditions. TMI–2 Solutions states that these inputs are still considered to be reasonably and sufficiently conservative for their use in development of the proposed 1200 kg SFML. Further, TMI–2 Solutions explains that the derived SFML bounds the entire expected fissile mass inventory throughout all physically separated areas within the reactor building.

TMI–2 Solutions states that the bounding fissile mass used to produce the SFML is assembled in idealized conditions that cannot credibly exist during decommissioning operations. TMI–2 Solutions explains that even if the expected remaining fissile mass throughout the building, including hold up in all piping and cubicles were to be brought together, a criticality is not feasible. TMI–2 Solutions indicates that there are no credible operational upsets to realize the ideal configuration for criticality but even in the event that the upset occurs, it would require fissile mass in excess of that analyzed, which is in excess of what could occur. In addition, TMI–2 states that the SFML is based on a significantly reduced impurity concentration below that demonstrated to be present. The K_{eff} for the new SFML in the idealized static conditions does not exceed 0.95. The calculation of the new SFML states that the entire mass of the core debris material cannot be configured into an arrangement whereby a criticality event is possible. Debris material removal operations will involve loading 12–14 storage casks with each cask containing less than the total SFML calculated for Phase 1b of decommissioning. The NRC staff preliminarily agrees with TMI–2 Solutions that the overall subcritical nature, namely inherent elemental constituents, of the fuel debris remaining at the TMI–2 facility today is equivalent to that associated with the fuel debris at TMI–2 prior to defueling operations. TMI–2 Solutions states that the presence of some intact fuel, and the results of sampling campaigns conducted prior to defueling indicating slight impurity gradients through the RV did not easily allow the application of a representative fuel composition to the entirety of the core during the development of the previous SFML. Further, TMI–2 Solutions explains that static and accident conditions analyzed after defueling merely credited the minimum concentration of impurities to ensure the facility was safe. In each of these scenarios, the applied conservatisms are different. TMI–2 believes that currently, core debris in the lower head region of the RV is most representative of what remains in the RV at the present time. Therefore, TMI–2 Solutions explains in its LAR that a reasonable representative impurity concentration can be applied to the homogenized mass in development of a new SFML for decontamination and decommissioning. NRC staff preliminarily agrees with TMI–2 Solutions that a conservative approach to adequately represent the inherent characteristics of the remaining fuel debris can be taken with respect to the development of an SFML for the remaining decommissioning activities. This approach would not necessarily be applicable for the previous defueling operations or the related SFML developed at that time. TMI–2 Solutions indicates in its LAR that the current SFML was conservatively derived and, coupled with the conservatively estimated masses and the planned decommissioning operations, provides significant and adequate margin of safety that ensures that the potential for a criticality is not credible.

Also, TMI–2 Solutions explains in its LAR that the proposed change would not exceed or alter the SFML design basis as presented in the Final Safety Analysis Report and K_{eff} for the new SFML does not exceed 0.95.

The NRC staff reviewed the licensee's NSHC in its LAR for the SFML analysis, and based on the above, the NRC staff preliminarily agrees with the licensee's analysis and finds its assumptions reasonable. Therefore, the NRC staff preliminarily agrees with TMI–2 Solutions' conclusions that the proposed amendment would not involve a significant reduction in a margin of safety. Therefore, the NRC staff preliminarily concludes that deletion of PDMS TS 3/4.2 ''Reactor Vessel Fuel'' does not involve a significant reduction in a margin of safety during Phase 1b and Phase 2.

As part of the PDMS condition, loads over 50,000 lbs. are prohibited from travel over the RV. TMI–2 Solutions in its LAR, states that the deletion of TS 3/4.3 would not exceed or alter a design basis or safety limit because there are no limiting conditions on operations. Further TMI–2 states in its LAR that there are no SSCs that would prevent safe shut down of the reactor. The NRC staff notes that the reactor is no longer operating and has permanently ceased operations as documented on February 13, 2013. As discussed in Section 2 ''Detailed Description and Basis for The Changes,'' for Phase 1b and Phase 2 of decommissioning, TMI–2 Solutions committed to develop a hoisting and rigging program that addresses movement of loads at TMI–2. The purpose of the hoisting and rigging program is to define the minimum requirements for the safe operations of cranes and hoists. The hoisting and rigging program would provide as applicable, detailed requirements for training and qualification of personnel, inspection and maintenance of cranes or hoists, the safe use of rigging equipment as well as direction for performing non-standard lifts to ensure that lifting operations are performed in a safe manner. TMI–2 Solutions has

committed in its February 19, 2021, application to develop a lift plan for all lifts as directed by the hoisting and rigging program where a load drop or load impingement could contribute to release or dispersal of radioactive material to the environment could exceed the threshold for an unusual event.

The NRC staff preliminarily concludes that implementation of the hoisting and rigging program provides a defense in depth approach to preventing a load drop from occurring. TMI–2 Solutions has committed to address crane design features such as load cells, and travel stops, as required, to ensure safe travel paths. Also, TMI–2 Solutions has committed that it will provide barriers as required to preclude the effects of a load drop. TMI–2 Solutions provided a calculation found in Attachment 5 of its February 19, 2021, application that assesses increasing the SFML from 42 kg to approximately 1200 kg. As stated in the calculation, it is not credible to have 1200 kg U in an idealized configuration for criticality to occur. There are no credible operational upsets to realize the ideal configuration but even if the upset occurs, it would require fissile mass in excess of that analyzed, which is in excess of what could occur in addition to a greatly reduced impurity concentration to present a criticality hazard. Therefore, the NRC staff preliminarily concludes that the deletion of TS 3/4.3 ''Crane Operations'' does not significantly reduce the margin of safety during Phase 1b and Phase 2.

The TMI–2 sealed sources are maintained at TMI–1 and managed by Constellation Energy, LLC under a program compliant with the requirements of 10 CFR 70.39(c). Deleting TS 3/4.4 ''Sealed Sources'' from the TMI–2 TS and relocating the TS requirements to the DQAP, as noted in TMI–2 Solutions' January 7, 2022, supplement, does not involve a significant reduction in a margin of safety.

The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. The proposed changes do not result in a change in initial conditions, or in any other parameter affecting the course of the remaining decommissioning activity accident analysis. Therefore, the NRC preliminarily concludes that the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, NRC preliminarily concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of NSHC is justified.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on

submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

V. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS accession No.
Three Mile Island, Unit 2, License Amendment Request Decommissioning Technical Specifications, with No Significant Hazards Consideration, dated February 19, 2021.	ML21057A046.
21–003, Rev 00, ''Decommissioning Radioactive Waste Handling Accident Calculation For TMI–2'', dated February 11, 2021.	ML21057A045 (non-public, withheld pursuant to 10 CFR 2.390).
Three Mile Island, Unit 2, Supplemental Information to License Amendment Request Decommissioning Technical Specifications, dated May 5, 2021.	ML21133A263 (Package).
License Amendment Request—Three Mile Island, Unit 2, Decommissioning Technical Specifications, Supplemental Information, dated January 7, 2022.	ML22013A177.
Three Mile Island, Unit 2, Supplemental Information to License Amendment Request, Decommissioning Technical Specifications, dated March 23, 2022.	ML22101A079.
Three Mile Island, Unit 2, Supplemental Information to License Amendment Request, Decommissioning Technical Specifications, dated April 7, 2022.	ML22101A080 (Package).
Three Mile Island Nuclear Station, Unit 2 (TMI–2)—License Amendment Request—Three Mile Island, Unit 2, Decommissioning Technical Specifications, Response to Questions, dated May 16, 2022.	ML22138A285.
NRC Administrative Letter 95–06, Relocation of TS Administrative Controls Related to QA, dated March 19, 1996, and December 12, 1995.	ML20101P963.
Camper, L.W. (NRC) to Pace, D.L. (GPU Nuclear) letter, ''Three Mile Island Nuclear Station, Unit 2 (TM1–2)—Failure to Submit Post-Shutdown Decommissioning Activities Report—Non-cited Violation (Docket: 05000320),'' dated February 13, 2013.	ML12349A291.
GPU Nuclear Calculation 4440–7380–90–017, Revision 4, ''PDMS SAR Section 8.2.5 Fire Analysis Source Terms'', dated May 16, 2022.	ML22138A287 (non-public, withheld pursuant to 10 CFR 2.390).
Requests for Addition Information for Proposed Decommissioning Tech Specs License Amendment Request, dated July 29, 2022.	ML22210A080.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff,

and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[2] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [3] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The Attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: August 17, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.

[2] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[3] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[4] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2022–18031 Filed 8–19–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0124]

Information Collection: Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, ''Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels.''

DATES: Submit comments by October 21, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0124. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0124 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0124. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0124 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without

charge by accessing ADAMS Accession No. ML22109A108. The draft supporting statement and burden table are available in ADAMS under Accession Nos. ML22157A431 and ML22227A117 respectively.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0124, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Scheduling Information for the Licensing of Accident Tolerant, Higher Burnup, and Increased Enrichment Fuels.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Once with the addition of voluntary updates, as available.
6. *Who will be required or asked to respond:* All holders of operating licenses for nuclear power reactors under the provisions of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or holders of a combined license under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. All holders of licenses and potential applicants for a fuel cycle facility under the provisions of 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' and holders of licenses and Certificates of Compliance (CoC) and potential applicants for transportation and storage systems under the provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''
7. *The estimated number of annual responses:* 43.
8. *The estimated number of annual respondents:* 43.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 780.
10. *Abstract:* The accident tolerant fuel (ATF) program is a joint effort between the U.S. nuclear industry and the U.S. Department of Energy to design and pursue approval of various fuel types with enhanced accident tolerance. The ATF program includes development of technologies that would extend fuel burnup and enrichment limits beyond currently authorized levels. In order to deploy these new technologies, the industry will need to seek authorization for various activities throughout the fuel cycle, from fuel fabrication, transportation, and storage to installation and utilization in a reactor. In order to support the timely processing of licensing activities needed to support the deployment of these new technologies, the NRC is seeking scheduling information for licensing submittals from all respondents. This information will allow the NRC to better allocate its resources to support the activities associated with licensing these technologies while being better able to meet the industry's desired timeline.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your response.
2. Is the estimate of the burden of the information collection accurate? Please explain your response.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 16, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–17944 Filed 8–19–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–234]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 24, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–234; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* August 16, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 24, 2022.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2022–18055 Filed 8–19–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–027, OMB Control No. 3235–0035]

Proposed Collection; Comment Request; Extension: Rule 17a–13

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–13(b) (17 CFR 240.17a–13(b)) generally requires that at least once each calendar quarter, all registered brokers-dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) (17 CFR 240.17a–13(c)) provides that under specified conditions, the count, examination, and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require broker-dealers to file a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X–17a–5 (17 CFR 248.617), which must be filed with the Commission under Exchange Act Rule 17a–5 (17 CFR 240.17a–5). Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. Rule 17a–13 also does not apply to certain broker-dealers required to register only because they effect transactions in securities futures products.

Rule 17a–13 requires the recording of only those differences in the broker-dealer's records that remain unresolved seven business days after the date of the examination, count, and verification. The Commission or the self-regulatory organization (''SRO'') designated as the broker-dealer's examining authority may examine these recorded discrepancies in a broker-dealer's records to determine whether they are the result of the firm's inability to maintain control of its business.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and applicable SROs to those firms experiencing back-office operational issues.

As of August 2022, there were approximately 3,532 active broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with Rule 17a–13. As noted, Rule 17a–13 requires a broker-dealer to account for all securities in its possession or subject to its control or direction. Many broker-dealers hold few, if any, securities, while others hold large quantities. Therefore, the time burden of complying with Rule 17a–13 will depend on respondent-specific factors, including size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent is 100 hours per year on an ongoing basis to maintain the records required under Rule 17a–13. This estimate takes into account the fact that more than half of the 3,532 respondents—according to financial

reports filed with the Commission—may spend little or no time complying with Rule 17a–13, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total recordkeeping burden per year is approximately 353,200 hours (3,532 respondents × 100 hours/respondent)

The records required to be made by Rule 17a–13 are available only to Commission examination staff, state securities authorities, and applicable SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 21, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 16, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17981 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Thursday, August 25, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: August 18, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18134 Filed 8–18–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95504; File No. SR–ICC–2022–008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Stress Testing Framework and the Liquidity Risk Management Framework

August 16, 2022.

I. Introduction

On June 23, 2022, ICE Clear Credit LLC (''ICC'') 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 its Stress Testing Framework (''STF'') and the ICC Liquidity Risk Management Framework (''LRMF''). The proposed rule change was published for comment in the **Federal Register** on July 11, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes to revise its STF and LRMF to introduce new stress scenarios, clarify existing stress scenarios, and make other minor edits.[4] Specifically, the proposed rule change would introduce new stress scenarios related to the Coronavirus pandemic and oil price war (the ''COVID–19/Oil Crisis'').

A. STF

The proposed amendments to the STF introduce new stress scenarios related to the COVID–19/Oil Crisis, clarify existing stress scenarios related to credit default index swaptions (''index options''), and make other minor edits. Specifically, the proposed changes would amend Section 5.1 containing the historically observed extreme but plausible market scenarios with a minor edit to abbreviate a term and to introduce additional stress scenarios

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Stress Testing Framework and the Liquidity Risk Management Framework; Exchange Act Release No. 95200 (Jul. 5, 2022); 87 FR 41149 (Jul. 11, 2022) (File No. SR–ICC–2022–008) (''Notice'').

[4] The description that follows is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in the STS, LRMF or ICC's Clearing Rules, as applicable.

related to the COVID–19/Oil Crisis. ICC previously introduced price-based stress scenarios related to the COVID–19/Oil Crisis in the STF, which replicate observed instrument price changes during this period.[5] This proposal would incorporate complementing spread-based stress scenarios related to the COVID–19/Oil Crisis, which reflect observed relative spread increases and decreases during this period (the ''COVID–19/Oil Crisis Spread Scenarios''). Additionally, the stress scenarios related to index options (*i.e.,* the stress options-implied Mean Absolute Deviation (''MAD'') scenarios) would be moved into a separate section and corresponding references throughout the STF would accordingly refer to this new Section 9.

The proposal would make the following additional clarifications in Section 5 and throughout the STF. To distinguish between price- and spread-based stress scenarios, ICC proposes to replace references to COVID–19/Oil Crisis Scenarios in the current STF with references to COVID–19/Oil Crisis Price Scenarios. The proposal would also incorporate the COVID–19/Oil Crisis Spread Scenarios in the other categories of scenarios, namely in Section 5.3 (hypothetically constructed (forward looking) extreme but plausible market scenarios) and Section 5.4 (extreme model response test scenarios), as well as in Section 14 (interpretation of results).

Additionally, the proposal would add text describing how the existing stress scenarios for index option positions are integrated within the current set of stress scenarios for CDS index and single name instruments. The stress options-implied MAD scenarios are currently generated for index option positions and are not applied to portfolios independently, but rather, are directly incorporated into the CDS stress scenarios. The proposed rule changes would clarify that the stress options-implied MAD scenarios complement the underlying stress scenarios (in Section 6) and reference proposed Section 9 for more detail on the stress options-implied MAD approach (in Section 8).

ICC proposes to add a new Section 9 to the STF, which would memorialize the stress options-implied MAD scenarios and approach. As described above, information from current Section 5.1 on these scenarios would move to Section 9 with certain amendments. The proposed amendments would not change ICC's stress testing methodology, but instead would add detail and updated terminology for clarity. The proposed language would explain that when index options are present in a portfolio, the underlying market stress test scenarios incorporate the stress options-implied MAD scenarios. ICC proposes terminology changes that would specify that the scenarios consider an increase/decrease in the options-implied MAD upon spread widening/tightening and clarification changes would detail the incorporation of the options-implied MAD in the scenarios. The proposed changes are intended to more clearly set forth the process for creation of the stress options-implied MAD, including how the necessary components are derived. No changes are proposed with respect to what the final scenario prices of the index option instruments reflect. ICC also proposes to renumber sections throughout the STF as necessary, including in Table 1 in Section 14. Finally, proposed Section 17 adds a revision history to track changes.

B. LRMF

ICC proposes corresponding changes to the LRMF to introduce new stress scenarios related to the COVID–19/Oil Crisis, clarify existing stress scenarios related to index options, and make other minor edits.

ICC proposes to revise Section 2.3 of the LRMF regarding liquidity requirements for client-related accounts. The proposed changes would specify that Clearing Participants deposit 100% of their Euro denominated client gross margin in any acceptable collateral to match Schedule 401 in the ICC Rules. This is intended to be a clean-up change to remove an outdated provision to ensure consistency across the LRMF and ICC Rules and would not change current requirements.

The proposed rule change would update Section 3.3.2 regarding the historically observed extreme but plausible market scenarios. The proposal would expand the set of extreme market events to include COVID–19 and the simultaneous occurrence of the oil price war, and would also make grammatical edits to change a term to its plural form. Consistent with the STF, ICC previously introduced the COVID–19/Oil Crisis price-based stress scenarios in the LRMF[6] and proposes now to incorporate the complementing COVID–19/Oil Crisis Spread Scenarios, which are also referred to as the COVID–19 OCSS, in the LRMF. The price-based stress scenarios would be referred to as the COVID–19/Oil Crisis Price Scenarios or COVID–19 OCPS throughout the document.

ICC also proposes revisions to Section 3.3.2 of the LRMF regarding stress options-implied MAD scenarios. To ensure consistency with the STF, ICC proposes adding language and changes in subsection (b) that would be similar to the language proposed in the STF. The proposed rule changes would memorialize the stress options-implied MAD scenarios and approach more clearly in the LRMF, including how the scenarios for index option positions are integrated within the current set of stress scenarios for CDS index and single name instruments. The proposed amendments would not change ICC's liquidity risk management methodology, but would instead add detail and update terminology to be clearer. The proposed terminology changes would specify that the scenarios consider an increase/decrease in the options-implied MAD and clarification changes would detail the incorporation of the options-implied MAD in the scenarios. The proposed changes are intended to more clearly set forth the process for the creation of the stress options-implied MAD, including how the necessary components are derived. No changes are proposed with respect to what the final scenario prices of the index option instruments reflect. ICC proposes a typographical fix in the footnotes to refer to the correct reference document. In addition, the proposal would amend subsection (d) to add a section symbol and to set out how the stress options-implied MAD scenarios that complement the extreme model response test scenarios are derived to match language currently in the STF.

ICC also proposes minor updates to Section 3.3 of the LRMF. Specifically, the proposal would incorporate the COVID–19/Oil Crisis Spread Scenarios in Section 3.3.3 in Table 1 containing the liquidity stress testing scenarios and in Section 3.3.4 related to the interpretation of results. The proposed rule changes would also make a minor edit to the extreme market scenarios in Table 1 to specify that the COVID19OCPS are extreme.

III. Discussion of Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the

[5] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Framework, ICC Risk Management Model Description, ICC Risk Parameter Setting and Review Policy, ICC Stress Testing Framework, and ICC Liquidity Risk Management Framework; Exchange Act Release Number 89639 (Aug. 21, 2020); 85 FR 53036 (Aug. 27, 2020) (File No. SR–ICC–2020–009).

[6] *Id.*

rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(4)(ii) and (vi), and Rule 17Ad–22 (e)(7)(i) and (vi) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[10]

As noted above, the proposal would incorporate into the STF and LRMF spread-based stress scenarios related to the COVID–19/Oil Crisis, which reflect observed relative spread increases and decreases during this period and which complement previously introduced the COVID–19/Oil Crisis price-based stress scenarios. By adding spread-based stress scenarios related to the COVID–19/Oil Crisis, the Commission believes the proposed rule change should enhance ICC's ability to manage risks in a way that makes it more flexible and capable of considering events beyond, for instance, price-based stress scenarios. The Commission believes that considering additional stress scenarios should, in turn, increase the likelihood that ICC calculates and collects sufficient financial resources to mitigate its potential exposures. Managing such exposures should, in turn, enhance ICC's ability to manage the default of a clearing participant by continuing to promptly and accurately clear and settle securities transactions.

Additionally, as noted above, the proposed rule change would, while not changing ICC's methodology, clarify in both the STF and LRMF that the stress options-implied MAD scenarios are integrated within the current set of stress scenarios for CDS index and single name instruments. Further, the proposed rule change would reorganize the STF to memorialize the stress options-implied MAD scenarios and approach in a separate section. The proposed language would explain that when index options are present in a portfolio, the underlying market stress test scenarios incorporate the stress options-implied MAD scenarios. Proposed terminology changes would specify that the scenarios consider an increase/decrease in the options-implied MAD upon spread widening/tightening, and clarification changes would detail the incorporation of the options-implied MAD in the scenarios. Further, the proposed changes would more clearly set forth the creation of the stress options-implied MAD, including how the necessary components are derived. The proposed rule change would also make various clean-up changes detailed above. For example, the proposed rule change would make grammatical edits, renumber sections, make changes to distinguish between price and spread COVID–19/Oil Crisis scenarios, and specify that Clearing Participants deposit 100% of their Euro denominated client gross margin in any acceptable collateral in order to match Schedule 401 in the ICC Rules. The Commission believes that these proposed organizational and clean-up changes would enhance the STF and LRMF used to support ICC's risk management system by increasing readability, transparency, and clarity regarding its practices, and therefore support the ability of those utilizing these documents to manage risk and maintain adequate financial resources, thereby promoting both the prompt and accurate clearance and settlement of securities transactions and the ability to safeguard securities and funds.

For these reasons, the Commission believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(4)(ii) and (vi)

Rule 17Ad–22(e)(4)(ii) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for ICC in extreme but plausible market conditions.[12] Rule 17Ad–22(e)(4)(vi)[13] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements of Rule 17Ad–22(e)(4)(ii).[14]

The Commission believes that the proposed introduction of the COVID–19/Oil Crisis Spread Scenarios would complement the current scenarios in the risk management policies and procedures and add additional insight into potential weaknesses in the ICC risk management methodology, thereby widening the range of stress scenarios that ICC employs to manage its credit exposures and financial resources. Additionally, the Commission believes that the proposed changes noted above to add detail, update terminology, ensure consistency across the STF and LRMF, and more clearly describe the stress options-implied MAD scenarios, would ensure transparency and strengthen ICC's risk management documentation, thereby supporting the effectiveness of ICC's risk management system to cover a wide range of foreseeable stress scenarios, including the COVID–19/Oil Crisis Spread Scenarios.

The Commission also believes that the proposed clarification and clean-up changes noted above would also enhance the readability of the policies and procedures, thereby strengthening the documentation for its users and ensuring that it remains up-to-date, clear, and transparent to support the effectiveness of ICC's risk management system.

For these reasons, the Commission believes that the proposed rule changes are therefore consistent with the requirements of Rules 17Ad–22(e)(4)(ii) and (e)(4)(vi).[15]

C. Consistency With Rule 17Ad–22(e)(7)(i) and (vi)

Rule 17Ad–22(e)(7)(i) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(4)(ii) and (vi) and 17 CFR 240.17Ad–22 (e)(7)(i) and (vi).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(4)(ii).

[13] 17 CFR 240.17Ad–22(e)(4)(vi).

[14] 17 CFR 240.17Ad–22(e)(4)(ii).

[15] 17 CFR 240.17Ad–22(e)(4)(ii) and (vi).

liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for ICC in extreme but plausible market conditions.[16] Rule 17Ad–22(e)(7)(vi) [17] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, including determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under Rule 17Ad–22(e)(7)(i).[18]

The Commission believes that the proposed changes noted above provide further clarity and transparency regarding ICC's liquidity stress testing practices to strengthen the documentation surrounding ICC's liquidity stress testing and liquidity risk management, including by providing additional scenario descriptions. The Commission believes that the introduction of the COVID–19/Oil Crisis Spread Scenarios would complement the current scenarios and, in turn, widen the range of stress scenarios that ICC employs to monitor and manage its liquidity risks. The Commission further believes that introduction of the COVID–19/Oil Crisis Spread Scenarios would improve ICC's testing of the sufficiency of its liquid resources, by providing additional insights and information using spread-based scenarios.

The Commission believes that the proposed clarification and clean-up changes provide further clarity and transparency regarding ICC's liquidity risk management practices in the LRMF, including by promoting uniformity with the STF, ensuring consistency between the LRMF and the ICC Rules regarding the client-related liquidity requirements, and ensuring that information and references are current, including in Table 1 which sets out the liquidity stress testing scenarios. The Commission believes that these proposed changes would strengthen ICC's STF and LRMF and aid users of the documentation in managing ICC's liquid resources.

For the reasons stated above, the Commission believes that the proposed rule changes are consistent with Rules 17Ad–22(e)(7)(i) and (vi).[19]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [20] and Rule 17Ad–22(e)(4)(ii) and (vi), and Rule 17Ad–22 (e)(7)(i) and (vi) thereunder.[21]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [22] that the proposed rule change (SR–ICC–2022–008), be, and hereby is, approved.[23]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17947 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–339, OMB Control No. 3235–0382]

Submission for OMB Review; Comment Request; Extension: Schedule 14D–9F

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14D–9F (17 CFR 240.14d–103) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) is used by any foreign private issuer incorporated or organized under the laws of Canada or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. We estimate that Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 2 respondents annually for a total reporting burden of 4 hours (2 hours per response × 2 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 21, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 16, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17983 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–332, OMB Control No. 3235–0378]

Submission for OMB Review; Comment Request; Extension: Form F–8

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the

[16] 17 CFR 240.17Ad–22(e)(7)(i).

[17] 17 CFR 240.17Ad–22(e)(7)(vi).

[18] 17 CFR 240.17Ad–22(e)(7)(i).

[19] 17 CFR 240.17Ad–22(e)(7)(i) and (vi).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(4)(ii) and (vi) and (e)(7)(i) and (vi).

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. We estimate that Form F–8 takes approximately one hour per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of one hour (15 minutes/60 minutes per response × 5 responses = 1.25 hours rounded to nearest whole number).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 21, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 16, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17982 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–306, OMB Control No. 3235–0522]

Submission for OMB Review; Comment Request; Extension: Rule 701

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 701(17 CFR 230.701) under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*) provides an exemption for certain issuers from the registration requirements of the Securities Act for limited offerings and sales of securities issued under compensatory benefit plans or contracts. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Information provided under Rule 701 is mandatory. We estimate that approximately 800 companies annually rely on the Rule 701 exemption and that it takes 2 hours to prepare each response. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the company for a total annual reporting burden of 400 hours (0.5 hours per response × 800 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 21, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 16, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17980 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–127, OMB Control No. 3235–0108]

Submission for OMB Review; Comment Request; Extension: Rule 14f–1

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information.

Under Exchange Act Rule 14f–1 (17 CFR 240.14f–1), if a person or persons have acquired securities of an issuer in a transaction subject to Sections 13(d) or 14(d) of the Exchange Act, and changes a majority of the directors of the issuer otherwise than at a meeting of security holders, then the issuer must file with the Commission and transmit to security holders information related to the change in directors within 10 days prior to the date the new majority takes office as directors. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 30 respondents for a total annual burden of 540 hours (18 hours per response x 30 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 21, 2022 to (i)

www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 16, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17979 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95503; File No. SR–LCH SA–2022–004]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Clearing of Markit iTraxx® Australia Indices and the Associated Single-Name Constituents and Remediation of WWR Margin Instability

August 16, 2022.

I. Introduction

On June 30, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), 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 its the Methodology Services Reference Guide: Credit Default Swap (''CDS'') Margin Framework (''CDSClear Risk Methodology'') and its CDS Clearing Supplement (the ''Clearing Supplement'') to permit the clearing of Markit iTraxx® Australia indices and the associated single-name constituents. The proposed rule change was published for comment in the **Federal Register** on July 13, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Markit iTraxx® Australia Indices and the Associated Single Name Constituents and Remediation of WWR Margin Instability; Exchange Act Release No. 34–95207 (July 7, 2022); 87 FR 41788 (July 13, 2022) (File No. SR–LCH SA–2022–004) (''Notice'').

II. Description of the Proposed Rule Change

LCH SA is proposing to amend its CDSClear Risk methodology and its Clearing Supplement to allow LCH SA to clear Markit iTraxx® Australia indices and the associated single-name constituents. The proposal would apply LCH SAs' current risk management processes to the management of risks posed by such products. Additionally, LCH SA proposes changes to its rules to remediate the recommendation of an independent model validation regarding the wrong-way risk (''WWR'' or ''Wrong-Way Risk'') margin instability.[4]

A. Amendments to the Clearing Supplement

The proposed rule change would amend the Clearing Supplement in order to include the relevant provisions to allow the clearing of the new Markit iTraxx® Australia indices and the associated single-name constituents. The proposed rule change would amend Part B of the Clearing Supplement, Section 1.2 (*Terms defined in the CDS Clearing Supplement*) to include a new sub-paragraph (a) to the definition of an ''Index Cleared Transaction Confirmation'' in order to make a reference to the form of confirmation which incorporates the iTraxx® Asia/Pacific Untranched Standard Terms Supplement. As a consequence, the sub-paragraphs (a), (b), (c), and (d) have been re-lettered as (b), (c), (d), and (e), respectively.

Further, Section 2.2 (*Index Cleared Transaction Confirmation*) of Part B of the Clearing Supplement would be amended to make appropriate references to any Index Cleared Transaction that is a Markit iTraxx® Australia Index in paragraphs (a)(i), (b)(i), (c)(i) and (f)(i).

B. Proposed Amendments to the CDSClear Risk Framework

The proposed rule change would amend Section 2.1.1.1 (*Interest Rate Curve*) of the CDSClear Risk Methodology by removing the specific interest rate curve name used with the International Swaps and Derivatives Association, Inc. (ISDA) standard model pricer (used as a converter between upfront cash and quoted spread in basis points, as described on *www.cdsmodel.com*). The proposal would instead refer to the ISDA website such that when the standard model moves to using new benchmark interest rates instead of LIBOR (such as the Secured Overnight Financing Rate and the Sterling Overnight Index Average) (collectively, the ''Risk Free Rates''), the CDSClear Risk Methodology will continue to refer to current information without risking becoming outdated.

For clarity, the proposal would remove ''through a CDS index'' under the provisions of Section 3.2 (*Self-referencing margin risk*) because the Self-Referencing Margin would apply as soon as a clearing member sells protection on itself regardless of the financial instrument used.

The proposed rule change would also add iTraxx® Australia to the list of indices on which index basis packages can be cleared under Section 3.4.5 (*Portfolio Margining*).

Because there are financial single-name constituents in the iTraxx® Australia index family, LCH SA proposes to subject positions on this index to a wrong-way risk margin requirement, which aims at capturing the potential contagion effect off the default of a clearing member (that is a financial institution) on instruments with open positions in the defaulter's portfolio (''Wrong Way Risk'' or ''WWR''). Specifically, the application of wrong-way risk margin is designed to address the risk that Australian financials credit spreads may widen following the default of a clearing member to an extent that goes beyond the spread move already covered by the spread margin. Because of this requirement, coupled with the need to address a recommendation raised by the independent risk model validation on the instability of the Wrong Way Risk margin component, the proposal would amend the provisions under Section 3.8 of the CDSClear Risk Methodology about the Wrong Way Risk margin to introduce the following updates:

—the introduction of the shocks applied to Australian entities in Section 3.8.1.1 (*Spread parallel moves*), alongside the shocks applied to existing products.

—a generalization of the calculation to all indices under Section 3.8.1.4 (*Index Shocks*) instead of specifically referring to Senior Financial or its parent index Main as is currently the case in Section 3.8.1.3.

—a description of the way the shocks on indices are defined in Section 3.8.1.4 (*Index Shocks*) as being derived directly from the shocks applied on constituents as a spread and CS01 weighted average.[5]

[4] The description that follows is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in the LCH SA CDSClear Risk methodology, CDS Clearing Supplement or LCH SA rules, as applicable.

[5] The new definition would apply to iTraxx® Australia as well as other indices containing

Continued

—a specification that the contribution to the spread margin used to derive the spread_SM under Sections 3.8.1.5 (*Wrong-Way/Right-Way P&L*) and 3.8.1.6 (*Instrument level Expected Shortfall*) would now consider the contribution of a single tenor, instead of the joint contribution of all tenors on a given product, to address the WWR margin instability observed with curve trades.[6]

—the introduction of iTraxx® Australia alongside other regions under Section 3.8.1.8 (*Trigger*) when aggregating Wrong-Way and Right-Way risk across regions.

—Some of the existing provisions under Sections 3.8.2 (Offsets inter-region) and 3.8.3 (Final WWR Margin) would be moved to the general Section 3.8.1 explaining the overall WWR calculation. Specifically, LCH SA proposed moving (i) the shocks defined when extending to CDX products are now part of the table inside Section 3.8.1.1 (Spread parallel moves) and the relevant provision would be moved at the end of this same section. Further, ta provision in Section 3.8.2 regarding Sub Financials would be moved to the Section 3.8.1.2 (Sub Financials) as a subsection of 3.8.1 (WWR: Parallel Move).

In addition to the changes to Section 3.8, LCH SA proposes to update the provisions of Section 4 on Additional Margin for the Liquidity and Concentration Risk Margin under paragraphs 4.1.2 (*Macro Hedging Phase*) and 4.1.4.1 (*Diversification Ratio*) to specify that iTraxx® Australia index would be used for hedging and would define an additional sub-portfolio when considering liquidation costs.

Finally, the proposed changes would, for consistency purposes, remove any reference to LIBOR curves in Section 2.1.1.1 of the CDSClear Risk Methodology, and refer instead to the *cdsmodel.com* website, which details the pricer used by all market participants to convert from quoted spreads to upfronts in parallel to the cessation of LIBOR and the transition to Risk Free Rates. The proposed changes would also clarify in Section 1, Introduction that the short charge can cover 1 or 2 credit events, as the CDX.HY component does cover 2 defaults.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(6)(i) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10]

As noted above, the proposed rule change would amend the Clearing Supplement and the CDSClear Risk Methodology to allow and account for the clearing of the new Markit iTraxx® Australia indices and the associated single-name constituents. The Commission has reviewed the terms and conditions of the additional new Markit iTraxx® Australia indices proposed for clearing and has determined that those terms and conditions are substantially similar to the terms and conditions of the other indices LCH SA currently clears, with the key difference being the constituents. Moreover, after reviewing the Notice and LCH SA's policies and procedures, the Commission understands that LCH SA would clear Markit iTraxx® Australia indices and the associated single-name constituents pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. The Commission also understands that LCH SA would revise its existing margin methodology to accommodate the clearing of iTraxx Australian indices and the associated single-name constituents, but that LCH SA would not change its existing default management policies and procedures and operational process because the proposed product does include new risk factors not already addressed with regard to the Corporates and Financials indices or single-names that LCH SA currently clears.

In addition, based on its own experience and expertise, including a review of data on expected volume, market share, and the number of LCH SA Clearing Participants (''CPs'') expected to trade in Markit iTraxx® Australia indices and the associated single-name constituents as well as certain model parameters for Markit iTraxx® Australia indices, the Commission believes that LCH SA's rules, policy, and procedures, including as amended by the proposed rule change, are reasonably designed to (i) price and measure the potential risk presented by Markit iTraxx® Australia indices and the associated single-name constituents, (ii) collect financial resources in proportion to such risk, and (iii) liquidate these products in the event of a CP default. The design of LCH SA's rules, policies, and procedures should, therefore, help ensure LCH SA's ability to maintain sufficient financial resources to support its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional Markit iTraxx® Australia indices and other transactions. Further, as noted above, LCH SA would apply its existing margin methodology, including its Wrong Way Risk margin framework noted above, to the new iTraxx® Australia Index, which are similar to the European indices currently cleared by LCH SA. The Commission believes that this will, in turn, strengthen LCHS SA's ability to calculate margin requirements sufficient to cover its credit exposure to its clearing members.

Additionally, LCH SA is proposing a number of clarifying changes. Specifically, the proposed rule change would remove ''through a CDS index'' under the provisions of Section 3.2 (Self-referencing margin risk) of the CDSClear Risk Methodology as needlessly specific. The proposal would also remove the interest rate curve name used with the ISDA standard model pricer.[11] because it does not need to be specified in this risk documentation. Instead, the proposal would refer to the original website when the market moves to the new Risk Free Rates, so that the CDSClear Risk Methodology always automatically refers to the latest state in

financial names; however, LCH SA states that no financial impact is expected since index shocks are currently calibrated as the average shock of their constituents. Notice, 87 FR at 41789.

[6] LCH SA states that such specification is required to address the recommendation raised by the Independent Model Validation. Notice, 87 FR at 41789. Specifically, curve trades are trades involving long or short positions on the same index but along a set of [?] different maturity points. LCH SA calculates the WWR charge by converting positions into an equivalent 5-year notional position. This conversion can, in certain limited circumstances for curve trades, result in a WWR that is unreasonably high.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(1) and (e)(6)(i).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] Used as a converter between upfront cash and quoted spread in basis points, as described on *www.cdsmodel.com.*

the market without risking becoming outdated. The Commission believes that such changes would strengthen LCH SA's risk documentation by ensuring it is clear and current, which, in turn, would support LCH SA's ability to manage risk and maintain financial resources to promptly and accurately clear and settle trades.

For these reasons, the Commission believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.[12]

B. Consistency With Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[13]

As noted above, because there are financial single-name constituents in the iTraxx® Australia index family and positions on this index will therefore be subject to the Wrong Way Risk margin, the proposed rule change would apply LCH SA's existing margin methodology, including its Wrong Way Risk margin framework, to the new iTraxx® Australia Index. The Commission believes that by proposing to include the new iTraxx® Australia Index in LCH SA's existing margin methodology, the proposed rule change supports LCH SA's ability to have a risk-based margin system that considers, and produces margin levels commensurate with the risks and particular attributes of each relevant product, including the iTraxx® Australia Index and the associated single-name constituents. As noted above, the Commission has reviewed the terms and conditions of the additional new Markit iTraxx® Australia indices proposed for clearing and has determined that those terms and conditions are substantially similar to the terms and conditions of the other indices LCH SA currently clears, with the key difference being the constituents. Because of this similarity, LCH SA would apply its existing margin methodology, with the revisions discussed above, to the new iTraxx® Australia Index.

For this reason, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i).[14]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[15] and Rule (e)(6)(i) thereunder.[16]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change (SR–LCH SA–2022–004) be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–17946 Filed 8–19–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(6)(i).

[14] 17 CFR 240.17Ad–22(e)(6)(i).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(6)(i).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Change to SBA Secondary Market Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of change to Secondary Market Program.

SUMMARY: The purpose of this Notice is to inform the public that the Small Business Administration (SBA) is making a change to its Secondary Market Loan Pooling Program. SBA is decreasing the minimum maturity ratio for both SBA Standard Pools and Weighted-Average Coupon (WAC) Pools by 100 basis points, to 92.0%. The change described in this Notice is being made to cover the estimated cost of the timely payment guaranty for newly formed SBA 7(a) loan pools. This change will be incorporated, as needed, into the SBA Secondary Market Program Guide and all other appropriate SBA Secondary Market documents.

DATES: This change will apply to SBA 7(a) loan pools with an issue date on or after October 1, 2022.

ADDRESSES: Address comments concerning this Notice to Dianna L. Seaborn Director, Office of Financial Assistance U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; or *dianna.seaborn@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn Director, Office of Financial Assistance at 202–205–3645; or *dianna.seaborn@sba.gov.* If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Secondary Market Improvements Act of 1984, 15 U.S.C. 634(f) through (h), authorized SBA to guarantee the timely payment of principal and interest on Pool Certificates. A Pool Certificate represents a fractional undivided interest in a ''Pool,'' which is an aggregation of SBA guaranteed portions of loans made by SBA Lenders under section 7(a) of the Small Business Act, 15 U.S.C. 636(a). In order to support the timely payment guaranty requirement, SBA established the Master Reserve Fund (MRF), which serves as a mechanism to cover the cost of SBA's timely payment guaranty. Borrower payments on the guaranteed portions of pooled loans, as well as SBA guaranty payments on defaulted pooled loans, are deposited into the MRF. Funds are held in the MRF until distributions are made to investors (Registered Holders) of Pool Certificates. The interest earned on the borrower payments and the SBA guaranty payments deposited into the MRF supports the timely payments made to Registered Holders.

From time to time, SBA provides guidance to SBA Pool Assemblers on the required loan and pool characteristics necessary to form a Pool. These characteristics include, among other things, the minimum number of guaranteed portions of loans required to form a Pool, the allowable difference between the highest and lowest gross and net note rates of the guaranteed portions of loans in a Pool, and the minimum maturity ratio of the guaranteed portions of loans in a Pool. The minimum maturity ratio is equal to the ratio of the shortest and the longest remaining term to maturity of the guaranteed portions of loans in a Pool.

Based on SBA's expectations as to the performance of future Pools, SBA has determined that for Pools formed on or after October 1, 2022, SBA Pool Assemblers may increase the difference between the shortest and the longest remaining term of the guaranteed portions of loans in a Pool by 1 percentage point (*i.e.,* decreasing the minimum maturity ratio by 100 basis points). SBA does not expect a 1 percentage point decrease in the minimum maturity ratio to have an adverse impact on either the program or

the participants in the program. Therefore, effective October 1, 2022, all guaranteed portions of loans in Standard Pools and WAC Pools presented for settlement with SBA's Fiscal Transfer Agent will be required to have a minimum maturity ratio of at least 92.0%. SBA is making this change pursuant to Section 5(g)(2) of the Small Business Act, 15 U.S.C. 634(g)(2).

SBA will continue to monitor loan and pool characteristics and will provide notification of additional changes as necessary. It is important to note that there is no change to SBA's obligation to honor its guaranty of the amounts owed to Registered Holders of Pool Certificates and that such guaranty continues to be backed by the full faith and credit of the United States.

This program change will be incorporated as necessary into SBA's Secondary Market Guide and all other appropriate SBA Secondary Market documents. As indicated above, this change will be effective for Standard Pools and WAC Pools with an issue date on or after October 1, 2022.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2022–17958 Filed 8–19–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Final Agency Actions on Proposed Railroad Project in California on Behalf of the California High Speed Rail Authority

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA, on behalf of the California High-Speed Rail Authority (Authority), is issuing this notice to announce actions taken by the Authority that are final. By this notice, FRA is advising the public of the time limit to file a claim seeking judicial review of the actions. The actions relate to the Stockton Diamond Grade Separation Project (Project). These actions grant approvals for project implementation pursuant to the National Environmental Policy Act (NEPA) and other laws, regulations, and executive orders.

DATES: A claim seeking judicial review of the agency actions on the Project will be barred unless the claim is filed on or before August 21, 2024. If Federal law later authorizes a time period of less than 2 years for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT:

For the Authority: Scott Rothenberg, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, telephone: (916) 403–6936; email: *Scott.Rothenberg@hsr.ca.gov.*

For San Joaquin Regional Rail Commission (SJRRC) (Project Sponsor): Dan Leavitt, Manager of Regional Initiatives, SJRRC, telephone: (209) 944–6266; email: *dan@acerail.com.*

For FRA: Lana Lau, Supervisory Environmental Protection Specialist, FRA, telephone: (202) 923–5314; email: *Lana.Lau@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 23, 2019, FRA assigned, and the State of California acting through the Authority assumed, environmental responsibilities for the California High-Speed Rail (HSR) System pursuant to 23 U.S.C. 327.[1] Notice is hereby given that the Authority has taken final agency actions subject to 23 U.S.C. 139(*l*)(1); 49 U.S.C. 24201(a)(4) by issuing approvals for the Project. The Project Sponsor, SJRRC proposes to grade separate (via a flyover) a major rail intersection just south of downtown Stockton known as the Stockton Diamond. This intersection accommodates freight and passenger rail lines and is purportedly the busiest, most congested railway junction in California. Once completed, the grade separation is expected to relieve train backups, delays, vehicle/rail/bicycle and pedestrian conflicts, air quality impacts and increased costs, among other impacts. The SJRRC and the Authority have selected the Build Alternative (Alternative 2) identified in the Final Environmental Assessment (Final EA) for the Project because the Selected Alternative best satisfies the Purpose and Need for the Project. The actions by the Authority, and the laws under which such actions were taken, are described in the Finding of No Significant Impact (FONSI) and Final EA for the Project, approved on July 28, 2022. The FONSI, Final EA, and other documents are available online in PDF at SJRRC's website (*stocktondiamond.com/resources*) or by calling (209) 235–0133 or emailing *info@StocktonDiamond.com.* A printed copy of these documents is available at the Authority's office in Sacramento. The notice applies to the FONSI, Final EA, and all other Federal agency decisions with respect to the Project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. NEPA;
2. Council on Environmental Quality regulations;
3. Fixing America's Surface Transportation Act (FAST Act);
4. Department of Transportation Act of 1966, Section 4(f);
5. Land and Water Conservation Fund (LWCF) Act of 1965, Section 6(f);
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. National Historic Preservation Act of 1966, as amended;
11. Executive Order 11990, Protection of Wetlands;
12. Executive Order 11988, Floodplain Management;
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; and
14. Executive Order 13112, Invasive Species.

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Infrastructure Investment.

[FR Doc. 2022–17956 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–06–P

[1] Consistent with the Memorandum of Understanding between the Authority and FRA, which assigns FRA's NEPA responsibilities to the Authority, the Authority has assumed NEPA responsibilities for the ACE*forward* Project within the Altamont Corridor Express (ACE) System. The ACE*forward* Project is a phased passenger rail improvement program to reduce travel time and improve service reliability and passenger facilities along the existing Stockton to San Jose rail corridor. Long-term SJRRC goals for the ACE System include a suite of projects, such as the Stockton Diamond Grade Separation Project, that can connect an improved ACE service within the future California High-Speed Rail System Phase 2 extension to Sacramento.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0067]

General Motors—Receipt of Petition for Temporary Exemption From Various Requirements of the Federal Motor Vehicle Safety Standards for an Automated Driving System-Equipped Vehicle; Request for Comments; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: NHTSA received five requests to extend the comment period for a notice NHTSA published on July 21,

2022, seeking comment on NHTSA's receipt of a petition for temporary exemption from General Motors (GM). GM's petition seeks a temporary exemption from various requirements of the Federal motor vehicle safety standards (FMVSS) for a vehicle equipped with an automated driving system (ADS). In accordance with statutory and administrative provisions, NHTSA published a notice announcing receipt of GM's petition and seeking public comment. The comment period for the notice was scheduled to end on August 22, 2022. NHTSA is extending the comment period for the July 21, 2022 notice by 30 days.

DATES: The comment period for the notice published on July 21, 2022 at 87 FR 43959 is extended to September 21, 2022.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9332 before coming.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

SUPPLEMENTARY INFORMATION: On July 21, 2022, in accordance with statutory and administrative provisions, NHTSA published a notice announcing receipt of a petition from GM seeking exemption from portions of six FMVSS (87 FR 43595). GM's petition sought exemption from portions of FMVSS No. 102; *Transmission shift position sequence, starter interlock, and transmission braking effect,* FMVSS No. 104; *Windshield wiping and washing systems,* FMVSS No. 108; *Lamps, reflective devices, and associated equipment,* FMVSS No. 111; *Rear visibility,* FMVSS No. 201; *Occupant protection in interior impact,* and FMVSS No. 208; *Occupant crash protection.* The notice sought public comment regarding the merits of GM's exemption and on potential terms and conditions that should be applied to the temporary exemption if granted. The comment period for the notice is scheduled to end on August 22, 2022.

Comment Period Extension Requests

NHTSA received five requests to extend the comment period on the notice by 60 days. NHTSA received a joint request from the Advocates for Highway and Auto Safety and the Center for Auto Safety and individual requests from the San Francisco Municipal Transportation Agency (SFMTA), the City of Oakland Department of Transportation (OakDOT), the National Association of City Transportation Officials (NACTO), and the League of American Bicyclists.

The Advocates for Highway and Auto Safety and the Center for Auto Safety submitted a joint letter on August 4, 2022, requesting a 60-day extension of the comment period. The requestors state that the novel petition at issue raises numerous complex technical and policy issues involving vehicle safety that necessitate significant analysis. The requesters further state that extending the comment period will permit them to provide NHTSA with comprehensive input on the many substantial questions raised. The requestors state that extending the public comment period is in the public interest and will provide the public with sufficient time to provide specific and thorough feedback to the agency in a timely manner.[1]

SFMTA submitted a letter on August 8, 2022, requesting a 60-day extension of the comment period. SFMTA's

[1] The requestors note that they are also seeking an extension of the comment period for a notice regarding a part 555 petition submitted by Ford Motor Company (Ford) that was published on the same day as the GM notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

request like the joint requesters', states that the petition raises numerous complex technical and policy issues involving vehicle safety that necessitate significant analysis. SFMTA also states that extending the comment period will permit them to provide comprehensive input on the many substantial questions raised. Further, SFMTA notes that, as the City of San Francisco is the location with the most intensive testing of automated vehicles to date, including the locus of GM's testing, they have valuable insights to offer and stand to be significantly affected by the outcome of the petition.[2]

OakDOT submitted an email on August 10, 2022 requesting a 60-day extension of the comment period.[3] OakDOT stated that they do not believe the comment period provides sufficient time for an adequate response. OakDOT further stated that, as a local jurisdiction that is charged with ensuring safety of their transportation system, they request additional time to allow cities like theirs to fully assess potential safety impacts and provide valuable comments.

Similar requests were also received from NACTO and the League of American Bicyclists on August 10, 2022 and August 11, 2022, respectively.

Agency Decision

After consideration of the requests, NHTSA has decided to grant an extension of the comment period. The agency has determined that an extension is consistent with the public interest. NHTSA agrees that allowing additional time for the public to provide comments would be in the public interest. Therefore, NHTSA is granting the aforementioned requests to extend the comment period; however, NHTSA is extending it only for 30 days. A 30-day extension appropriately balances NHTSA's interest in providing the public with sufficient time to comment on the notice, with its interest to issue a final decision on the petition in an expeditious manner.

Authority: 49 U.S.C. 30113 and 30166; delegation of authority at 49 CFR 1.95.

[2] SFMTA also notes that they are also seeking an extension of the comment period for a notice regarding a part 555 petition submitted by Ford Motor Company (Ford) that was published on the same day as the GM notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

[3] OakDOT's email also requested a 60-day extension of the comment period for a notice regarding a part 555 petition submitted by Ford Motor Company (Ford) that was published on the same day as the GM notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–18103 Filed 8–18–22; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0066]

Ford Motor Company—Receipt of Petition for Temporary Exemption From Various Requirements of the Federal Motor Vehicle Safety Standards for an Automated Driving System-Equipped Vehicle; Request for Comments; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: NHTSA received six requests to extend the comment period for a notice NHTSA published on July 21, 2022, seeking comment on NHTSA's receipt of a petition for temporary exemption from Ford Motor Company (Ford). Ford's petition seeks a temporary exemption from various requirements of the Federal motor vehicle safety standards (FMVSS) for a vehicle equipped with an automated driving system (ADS). In accordance with statutory and administrative provisions, NHTSA published a notice announcing receipt of Ford's petition and seeking public comment. The comment period for the notice was scheduled to end on August 22, 2022. NHTSA is extending the comment period for the July 21, 2022 notice by 30 days.

DATES: The comment period for the notice published on July 21, 2022 at 87 FR 43602 is extended to September 21, 2022.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9332 before coming.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If

you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

SUPPLEMENTARY INFORMATION: On July 21, 2022, in accordance with statutory and administrative provisions, NHTSA published a notice announcing receipt of a petition from Ford seeking exemption from portions of seven FMVSS (87 FR 43602). Ford's petition sought exemption from portions of FMVSS No. 101, *Controls and Displays;* No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect;* No. 108, *Lamps, Reflective Devices, and Associated Equipment;* No. 111, *Rear Visibility;* No. 126, *Electronic Stability Control Systems;* No. 135, *Light Vehicle Brake Systems;* and No. 138, *Tire Pressure Monitoring Systems.* The notice sought public comment regarding the merits of Ford's exemption and on potential terms and conditions that should be applied to the temporary exemption if granted. The comment period for the notice is scheduled to end on August 22, 2022.

Comment Period Extension Requests

NHTSA received six requests to extend the comment period on the notice by 60 days. NHTSA received a joint request from the Advocates for Highway and Auto Safety and the Center for Auto Safety and individual requests from the San Francisco Municipal Transportation Agency (SFMTA), the City of Oakland Department of Transportation (OakDOT), the National Association of City Transportation Officials (NACTO), the League of American Bicyclists, and America Walks.

The Advocates for Highway and Auto Safety and the Center for Auto Safety submitted a joint letter on August 4, 2022, requesting a 60-day extension of the comment period. The requestors state that the novel petition at issue raises numerous complex technical and policy issues involving vehicle safety that necessitate significant analysis. The requesters further state that extending the comment period will permit them to provide NHTSA with comprehensive input on the many substantial questions raised. The requestors state that extending the public comment period is in the public interest and will provide the public with sufficient time to provide specific and thorough feedback to the agency in a timely manner.[1]

SFMTA submitted a letter on August 8, 2022, requesting a 60-day extension of the comment period. SFMTA's request like the joint requesters', states that the petition raises numerous complex technical and policy issues involving vehicle safety that necessitate significant analysis. SFMTA also states that extending the comment period will permit them to provide comprehensive input on the many substantial questions raised. Further, SFMTA notes that, as the City of San Francisco is the location with the most intensive testing of automated vehicles to date, they have valuable insights to offer and stand to be significantly affected by the outcome of the petition.[2]

OakDOT submitted an email on August 10, 2022 requesting a 60-day extension of the comment period.[3] OakDOT stated that they do not believe the comment period provides sufficient time for an adequate response. OakDOT further stated that, as a local jurisdiction that is charged with ensuring safety of their transportation system, they request additional time to allow cities like theirs to fully assess potential safety impacts and provide valuable comments.

Similar requests were also received from NACTO, the League of American Bicyclists, and America Walks on August 10, 2022, August 11, 2022, and August 15, 2022, respectively.

Agency Decision

After consideration of the requests, NHTSA has decided to grant an extension of the comment period. The agency has determined that an extension is consistent with the public interest. NHTSA agrees that allowing additional time for the public to provide comments would be in the public interest. Therefore, NHTSA is granting the aforementioned requests to extend the comment period; however, NHTSA is extending it only for 30 days. A 30-day extension appropriately balances NHTSA's interest in providing the public with sufficient time to comment on the notice, with its interest to issue a final decision on the petition in an expeditious manner.

Authority: 49 U.S.C. 30113 and 30166; delegation of authority at 49 CFR 1.95.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–18102 Filed 8–18–22; 11:15 am]

BILLING CODE 4910–59–P

[1] The requestors note that they are also seeking an extension of the comment period for a notice regarding a part 555 petition submitted by General Motors (GM) that was published on the same day as the Ford notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

[2] SFMTA also notes that they are also seeking an extension of the comment period for a notice regarding a part 555 petition submitted by General Motors (GM) that was published on the same day as the Ford notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

[3] OakDOT's email also requested a 60-day extension of the comment period for a notice regarding a part 555 petition submitted by General Motors (GM) that was published on the same day as the Ford notice and that also has a comment period that ends on August 22, 2022. NHTSA will address this request separately.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2021–0050]

Privacy Act of 1974; Department of Transportation, Federal Aviation Administration; DOT/FAA 807 Facility Access Control at the Mike Monroney Aeronautical Center

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of a modified Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation (DOT), Federal Aviation Administration (FAA), proposes to rename, update and reissue an existing system of records notice currently titled ''Department of Transportation, Federal Aviation Administration, DOT/FAA 807, Traffic Control at the Mike Monroney Aeronautical Center.'' The Mike Monroney Aeronautical Center (MMAC) is located in Oklahoma City, OK and is home to more than 8,000 full-time employees and receives 10,000 visitors

per month. It encompasses approximately 1,100 acres and 133 buildings and conducts training for DOT/FAA employees and contractors, and other federal employees (including employees of federal agencies who are tenants at the MMAC). Tenants are federal agencies who pay to lease space on the MMAC campus. The Director for the Office of Facilities and Management (AMP–1), the Security and Investigations Division (AMC–700) and the MMAC Operations and Maintenance Division (AMP–300), are responsible for maintaining access control to the facility including the administration of policies, programs and activities related to access to the MMAC facilities, as well as managing tasks related to vehicle registrations, key issuance, visitors (members of the public, including federal employees attending training or special events, short-term vendors, and research participants), as well as tenants and DOT/FAA employees and contractors assigned to the MMAC campus. These functions ensure that only authorized personnel obtain access and entrance to facilities located at the MMAC campus and that pedestrian and vehicular traffic within the campus is controlled and orderly.

Notice Updates

This Notice includes both substantive changes and non-substantive changes to the previously published Notice. The substantive changes have been made to the system name, system manager, authority, purpose, categories of individuals, categories of records, record source categories, routine uses, policies and practices for storage of records, policies and practices for retrieval of records, policies and practices for retention and disposal of records, and record access procedures. The non-substantive changes have been made to administrative, technical and physical safeguards, contesting records procedures, and notification procedures, as well as revisions to align with the requirements of the Office of Management and Budget (OMB) Memoranda A–108 and ensure consistency with other Notices issued by the Department of Transportation.

DATES: Written comments should be submitted on or before September 21, 2022. The Department may publish an amended Systems of Records Notice in light of any comments received. This new system will be effective September 21, 2022.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2021–0050 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.
- *Instructions:* You must include the agency name and docket number DOT–OST–2021–0050. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Karyn Gorman, Acting Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202–527–3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Transportation proposes to modify and re-issue a Department of Transportation system of record notice titled, ''Department of Transportation, Federal Aviation Administration, DOT/FAA 807 Traffic Control at the Mike Monroney Aeronautical Center (formerly named Law Enforcement Records and Central Files).'' This system of records covers records collected and maintained for the purposes of:

- Issuing permanent and temporary parking passes (or decals) to DOT/FAA employees and contractors, and tenants;
- Issuing short-term passes to federal employees and contractors who have forgotten or misplaced their Personal Identification Verification (PIV) card;
- Issuing short-term and long-term passes to visitors;
- Issuing keys (both physical and digital) to federal employees and contractors; and
- Maintaining records of individuals failing to adhere to parking policy and, therefore, cited for parking violations on the MMAC campus.

The following substantive changes have been made to the Notice:

1. *System Name and Number:* This Notice updates the system name to ''Facility Access Control at the Mike Monroney Aeronautical Center'' from the previous system name of ''Traffic Control at the Mike Monroney Aeronautical Center (formerly named Law Enforcement Records and Central Files).'' The update to the system name accounts for the access control conducted by the MMAC, such as visitor passes, parking decals and key access management.

2. *System Manager:* This Notice updates the system manager to include contact information for the Office of Facility Management which was not included in the previous Notice. The system manager contact information is compatible with the purpose of the system of records.

3. *Authority:* This Notice updates the authorities to include Chapter 5 of Title 40, United States Code, Property Management, and 41 CFR part 102–74, Facility Management which authorize the administration of programs and systems as well as collection of records to manage to property, and vehicular and pedestrian traffic. Reference to 44 U.S.C. 3101 authorizing the collection and use of agency documents and information related to agency policies, procedures and transactions is not appropriate for activity around the collection of information related to facility access management and has been removed.

4. *Purpose:* This Notice updates the purpose to incorporate all functions of the MMAC. This includes issuance of short- and long-term passes and parking decals, issuance of keys, and maintenance of individuals who violate parking policy. The records collected, used and maintained are compatible with the purpose of the system of records.

5. *Categories of Individuals:* Consistent with the expansion of the purpose of the system, this Notice expands the categories of individuals to include those individuals (employees, contractors, visitors, and tenants) who apply for temporary or long-term passes and parking decals authorizing them to enter the MMAC campus. Additionally, the language in this section has been

clarified to define tenants as individuals to whom the FAA issues parking passes and may cite for parking violations. The categories of individuals is compatible with the purpose of the system of records.

6. *Categories of Records:* This Notice updates categories of records to reflect that the system collects information for the purposes of issuing visitor passes, and parking decals. Visitor pass records include the following data elements, not limited to: full name and signature, temporary badge number, identity (ID) card number (including driver's license number), and phone number. Records collected and maintained for parking (including parking violations) include: full name, handicap (HC) placard number, decal number, tag number and state, vehicle description, vehicle year and make, and comments (including driver's license number). Records collected and maintained for key issuance and management include; key holder name, email address and signature, request ID, and key ID assigned. The categories of records is compatible with the purpose of the system of records.

7. *Records Source:* This Notice updates records source to reference that information collected and maintained is provided by individuals seeking parking decals and access to MMAC facilities. Items, such as temporary badge number, decal number and HC placard number, are provided by FAA employees and contractors approving these access and parking requests.

8. *Routine Uses:* This Notice updates routine uses to include the Department of Transportation's general routine uses applicable to this Notice as they were previously only incorporated by reference. OMB Memoranda A–108 recommends that agencies include all routine uses in one notice rather than incorporating general routine uses by reference; therefore, the Department is replacing the statement in DOT/FAA 807 that referenced the ''Statement of General Routine Uses'' with all of the general routine uses that apply to this system of records. This update does not substantially affect any of the routine uses for records maintained in this system.

9. *Records Storage:* This Notice updates policies and practices for the storage of records to reflect that current records are electronic. The previously published Notice stated that records are maintained in files and containers, and in password protected electronic databases in rooms secured with the FAA locking system.

10. *Records Retrieval:* This Notice updates the policies and practices for the retrieval of records to reflect that parking records (including parking violations) can be searched by name, temporary badge number, vehicle tag number or vehicle decal number. Visitor pass records can be retrieved by name. Key access management records may be retrieved by name as well as request ID and key ID. The records retrieval information is compatible with the purpose of the system of records.

11. *Retention and Disposal:* This Notice updates the policies and practices for retention and disposal of records section to include current National Archives and Records Administration (NARA) schedules governing the various record types. The updated retention schedules include the following groupings of record types: (a) Visitor pass and parking information (including parking violations) are covered by General Records Schedule (GRS) 5.6 Item 111 Visitor Processing Records where records are destroyed when 2 years old. The schedule includes retention for visitor passes in addition to parking; and (b) Key access management information is covered by GRS 5.6 Item 020 Key and Card Access Accountability where records are destroyed when 3 years old. The previously published Notice stated the following: Identification credentials including parking permits: Destroy credentials three months after return to issuing office. Related identification credential papers such as vehicle registrations: Destroy after all listed credentials are accounted for. Reports, statements of witnesses, warning notices, and other papers relating to arrests and traffic violations: Destroy when 2 years old. Records related to witness statements were included incorrectly and are no longer included in the updated Notice.

12. *Record Access:* This Notice updates the record access procedures to reflect that signatures on signed requests for records must either be notarized or accompanied by a statement made under penalty of perjury in compliance with 28 U.S.C. 1746 while the previous Notice directed the Record Access, Contesting Record and Notification sections to ''System Manager.''

The following non-substantive changes to the administrative, technical, and physical safeguards, contesting records procedures, and notification procedures, have been made to improve the transparency and readability of the Notice:

13. *Administrative, Technical and Physical Safeguards:* This Notice updates the administrative, technical and physical safeguards to reference current FAA processes. The purpose of this non-substantive update is to clarify language around security controls to restrict access to authorized users, thereby aligning with the requirements of OMB Memoranda A–108 and for consistency with other DOT/FAA SORNs.

14. *Contesting Records:* This Notice updates the procedures for contesting records to refer the reader to the record access procedures section. The purpose of this non-substantive update is to align with the requirements of OMB Memoranda A–108 and for consistency with other DOT/FAA SORNs.

15. *Notification:* This Notice updates the procedures for notification to refer the reader to the record access procedures section. The purpose of this non-substantive update is to align with the requirements of OMB Memoranda A–108 and for consistency with other DOT/FAA SORNs.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Transportation (DOT)/ Federal Aviation Administration (FAA) 807 Facility Access Control at the Mike Monroney Aeronautical Center.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Federal Aviation Administration, Mike Monroney Aeronautical Center (MMAC), 6500 S MacArthur Blvd., Oklahoma City, OK 73169.

SYSTEM MANAGER:

Federal Aviation Administration, Office of Facility Management, AMP–1, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd., Oklahoma City, OK 73169. *Contact information for the system manager is:* 405–954–4572.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. Chapter 5, and 41 CFR part 102–74, Facility Management.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system includes issuance of short- and long-term passes and parking decals, issuance of keys, and maintenance of records on individuals who violate parking policy.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records include information on DOT/FAA employees and contractors, visitors, and tenants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visitor pass records include the following data elements, not limited to: full name and signature, temporary badge number, ID card number (including driver's license number), and phone number. Records collected and maintained for parking (including parking violations) include: full name, HC placard number, decal number, tag number and state, vehicle description, vehicle year and make, and comments (including driver's license number). Records collected and maintained for key issuance and management include; key holder name, email address and signature, request ID, and key ID assigned.

RECORD SOURCE CATEGORIES:

Information maintained in records are provided by individuals seeking parking permits, access to facilities, or issuance of keys. Additional information may be provided by FAA employees and contractors reviewing and approving requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures, generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected. 4b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. The information contained in this system of records will be disclosed to the Office of Management and Budget, OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

7. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

8. Routine Use for disclosure to the Coast Guard and to Transportation Security Administration. A record from this system of records may be disclosed as a routine use to the Coast Guard and to the Transportation Security Administration if information from this

system was shared with either agency when that agency was a component of the Department of Transportation before its transfer to the Department of Homeland Security and such disclosure is necessary to accomplish a DOT, TSA or Coast Guard function related to this system of records.

9. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

10. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

11. a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

12. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

13. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

14. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

15. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this system are stored electronically. Records are accessed by designated persons who have an official need for the information. All electronic records for the system are backed up to an offsite storage location to facilitate information recovery in the event of a disaster or system failure that removes or makes local data unavailable.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records for parking (including parking violations) can be searched by name, temporary badge number, vehicle tag number or vehicle decal number. Records for visitor passes can be retrieved by name. Records for key access management may be retrieved by name as well as request ID and key ID assigned.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per GRS 5.6 Item 111, visitor pass and parking records (including parking violations) are retained for 2 years. Per GRS 5.6 Item 020, key access records are retained and destroyed 3 years after return of key. For all records, longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section ''System Manager''. When seeking records about yourself from this system of records or any other Departmental system of records your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request and your signature must either be notarized or

submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Previous version of this system of records, DOT/FAA 807—Traffic Control at the Mike Monroney Aeronautical Center was published in the **Federal Register** on April 11, 2000 (65 FR 19519).

Issued in Washington, DC.

Karyn Gorman,

Acting Departmental Chief Privacy Officer.

[FR Doc. 2022–17945 Filed 8–19–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2021–0094]

Privacy Act of 1974; Department of Transportation, Federal Aviation Administration; DOT/FAA–815; Investigative Record System; System of Record Notice

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation (DOT), Federal Aviation Administration (FAA) proposes to update and reissue a current DOT system of records titled, ''DOT/FAA–815, Investigative Record System.'' The system collects information on FAA employees, contractors, and members of the public in support of the Personnel Security Background and Internal investigations programs. The records in this system document all official actions taken on individuals who are subject to this notice. This Privacy Act System of Records Notice (SORN) is being updated to include substantial changes to system location, system manager, authority for maintenance, purpose, categories of individuals, categories of records, records source category, routine uses, practices for storage of records, policies and practices for retrieval of records, policies and practices for retention and disposal of records, and exemptions claimed and non-substantial changes to administrative, technical and physical safeguards, records access, contesting records, and notification procedures.

DATES: Written comments should be submitted on or before *September 21, 2022*. The Department may publish an amended SORN in light of any comments received. This new system will be effective *September 21, 2022.*

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2021–0094 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.
- *Instructions:* You must include the agency name and docket number DOT–OST–2021–0094.
- All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *https://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Karyn Gorman, Acting Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or (202) 527–3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT), Federal Aviation Administration (FAA) proposes to update and reissue a DOT system of records titled, ''DOT/FAA 815 Investigative Records System''. The FAA requires personnel security background investigations for current and potential FAA employees (inclusive of FAA federal government employees, interns, employees from other federal agencies on a detail, contractors and persons performing business), for suitability for federal government employment within the FAA. The investigations include decisions regarding the suitability of a security clearance and issuance of a Personal Identity Verification (PIV) card for physical and logical access to FAA controlled facilities and information systems. In addition, the FAA conducts internal investigations to include suspected criminal and civil violations by FAA employees and contractors, aircraft owners, and airmen and other FAA certificate holders as defined by 49 United States Code (U.S.C.) § 40102(a)(8), including an individual: (1) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way; (2) who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances (except to the extent the FAA Administrator may provide otherwise for individuals employed outside the United States); or (3) who serves as an aircraft dispatcher or air traffic control tower operator. Internal investigations may include, but are not limited to, counterfeit certificates; falsification of official documents; property theft; laser incidents; and other investigative services provided to law enforcement agencies. The system of records supports the FAA's mandate to investigate the actual or probable violation of civil and criminal laws regulating controlled substances by aircraft owners and airmen. The FAA conducts Personnel Security Background and Internal investigation services to the FAA and aviation communities to ensure aviation safety, support national security, and promote an efficient airspace system. The Investigative Records System serves as a repository of and documents the results and actions of Personnel Security Background investigations, conducted both before and after an employee's entry on duty, and internal investigations of alleged criminal and

civil violations by the employees. The purpose of this system is to collect and maintain records regarding: (1) Security clearance suitability determination for pre-employment and continuous evaluation; and the issuance of a personal identity verification (PIV) card for physical and logical access to FAA controlled facilities and information systems; (2) Internal investigative records concerning employees suspected of misconduct; airmen and other FAA certificate holders suspected of criminal activity as defined by 49 U.S.C. 40102(a)(8); and (3) List of individuals that represent a security concern and are temporarily or permanently denied access to FAA facilities. The following substantive changes have been made to the Notice:

1. *System Location:* The system of records is no longer maintained by the Office of the Associate Administrator for Civil Aviation Security in Washington, DC The update reflects that the current system locations where hard copy records are maintained are FAA Headquarters and regional Office of Security and Hazardous Materials Safety (ASH) Offices.

2. *System Manager:* The system manager is updated to reflect the organizational name change of the Civil Aviation Security Office to ASH and add contact information for the system manager.

3. *Authority for Maintenance of the System:* The authorities are updated to include Homeland Security Presidential Directive 12 (HSPD–12) and Federal Information Processing Standard 201: Policy for a Common Identification Standard for Federal Employees and Contractors, and Executive Order 13764. These authorities establish the requirements for federal agencies to conduct initial and ongoing background suitability investigations of individuals seeking employment with or access to federal facilities and information systems. Investigations have been conducted under these authorities and they are consistent with the purposes of the published SORN.

4. *Purpose:* The purpose section is updated to provide clarity that the system of records includes the results and actions of Personnel Security Background and Internal investigations.

5. *Categories of Individuals:* The categories of individuals section is updated to remove individuals involved in tort claims against the FAA because these individuals are not subjects of Personnel Security Background and Internal investigations. Additionally, the Notice breaks out and identifies the individuals subject to Personnel Background Security and Internal investigations.

6. *Categories of Records:* The categories of records maintained in the system section is updated to provide transparency and clarifies that the records maintained in the system of records includes, but are not limited to, Standard Form (SF)-85 Questionnaire for Non-Sensitive Positions, SF–85P Questionnaire for Public Trust Positions, and SF–86 Questionnaire for National Security Positions, Office of Personnel Management (OPM) investigation results, resumes, reports from interviews and other inquiries, results of investigations and inquiries, suitability records, financial records, credit reports, medical records, educational institution records, employment records, divorce decrees, criminal records, citizenship status, and violations. These records include the following data about individuals such as name, address, date of birth, place of birth, email address, phone number, case number, alien registration number, airmen certificate number, social security number (SSN), passport number, driver's license number, biometrics, photographs, fingerprints, license plate number, vehicle identification number, bank account number and credit card number. Additionally, records about FAA employees and contractors may include FAA line of business, processing region, position, duty city and state, and contract number.

7. *Records Source:* The records source section is updated to include that information maintained in this system of record is collected from current and former employees, contractors, applicants, detailees, and consultants through in-person interviews, investigative reports from other Federal government agencies, state/local governments, law enforcement agencies, medical providers, credit bureaus, educational institutions, instructors, coworkers, neighbors, family members, and acquaintances.

8. *Routine Uses:* The previously published routine use allowing the disclosure of records pursuant to a law enforcement investigation or inquiry was duplicative of the disclosures permitted under b(7) of the Privacy Act and has been removed. In addition, this update clarifies that FAA provides the authorized representatives of United States air carriers the results of investigation of individuals that contain information related to aviation safety. Finally, the updated Notice explicitly includes DOT Departmental General Routine Uses, previously incorporated by reference, to the extent they are compatible with the purposes of this System.

9. *Records Storage:* The policies and practices for the storage of records section is updated to reflect records previously stored in approved security file cabinets and containers, in file folders, on lists and forms, and in computer-processable storage media are now stored both electronically and in paper copy in a secure area accessed by authorized personnel only with a need to know.

10. *Records Retrieval:* The retrieval of records is updated to explicitly list all identifiers routinely used to retrieve records including date of birth, SSN, and other unique identifiers such as, case number, airmen certificate number, passport number, and alien registration number. The FAA does not retrieve records in this system of records by symbol and references to such have been removed.

11. *Retention and Disposal:* The retention and disposal policy is updated to include all National Archives and Records Administration (NARA) disposition schedules that are applicable to the records maintained in the system. The FAA is in the process of updating the NARA Records Control Schedule NC1–237–77–03 Investigative Case Files, December 22, 1977, to meet current business practices; however, the FAA to will continue to follow current retention schedules that apply to the records that are stored in the system as follows: Item 8, Investigations to locate employee or airmen and airmen and aircraft searches, destroy records upon completion of administrative action or 5 years from date of last entry, whichever is sooner. Other investigative files should be destroyed 5 years following last completed action of litigation or 5 years from the date of last inquiry or entry into the file. Investigative correspondence files should be destroyed 3 years from date of origin. Reports about stolen aircraft and aircraft engaged in illegal activities should be destroyed 5 years after creation. Personnel security investigative reports are maintained in accordance with NARA General Records Schedule (GRS) 5.6, Security Records, item 170 and are destroyed 5 years after separation. The copy of the OPM investigation report is destroyed when no longer needed for agency business use or upon employee separation.

Personnel security and access clearance records are maintained in accordance with NARA GRS 5.6, items 180 and 181, Personnel Security and Access Clearance Records. Per GRS 5.6, item 180, records of individuals not issued clearances are destroyed 1 year

after consideration of the candidate ends, but longer retention is authorized if required for business use. Per GRS 5.6, item 181, records of people issued clearances are destroyed 5 years after the employee or contractor relationship ends, but longer retention is authorized if required for business use. Per GRS 5.6, Item 190, Index to the Personnel Security Case Files, records are destroyed when superseded or obsolete. Per GRS 5.6, item 200, Information Security Violation Records, files should be destroyed 5 years after close of case or final action, whichever occurs sooner, but longer retention is authorized if required for business use.

12. *Exemptions:* The exemptions claimed for this system are updated to reflect the removal of Privacy Act exemption (j)(2) as the FAA is no longer a law enforcement agency as defined by the Act. The Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71) transferred the principal function of civil aviation security from the FAA to the Transportation Security Administration on February 22, 2002. Legacy records created prior to the effective date of the ATSA will be afforded coverage until they have reached the appropriate disposal period. Additionally (k)(7) is listed in the Department's Part 10 rulemaking and was not included in the previously published SORN. The Department has determined that the inclusion of (k)(7) in the regulation was done in error and will issue updated rulemaking to remove it. The Department has not exercised this exemption for this system of records. The Notice is being updated to explicitly identify the exemptions claimed for this system of records consistent with the previously published rulemaking. The system claims the following exemptions: 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5). This is not a substantive change because the rulemaking was already published.

Additionally, this notice includes the following non-substantive changes to simplify and clarify the language, formatting, and text of the previously published Notice to align with the requirements of the Office of Management and Budget Memoranda A–108, and for consistency with other departmental system of records notices.

13. *Administrative, Technical and Physical Safeguards:* The safeguards discussion has been updated to include additional controls used to protect records, including the mandatory use of DOT/FAA issued PIV cards to access records and the capture of audit logs of all user activities.

14. The records access procedures is updated to include system manager's contact information which is available at *https://www.faa.gov/about/office_org/headquarters_offices/ash/contacts/* for individuals seeking access to their records in the system.

15. *Records Access:* The contesting records and notification procedures is updated to refer the reader to the record access procedures section.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a SORN identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

DOT/FAA–815; Investigative Record System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Mike Monroney Aeronautical Center (MMAC), 6500 South MacArthur Boulevard, Oklahoma City, OK 73169–6901 and Office of Security and Hazardous Materials Safety (ASH), 800 Independence Avenue SW, Washington DC 20591. Hard copy records are located within ASH and locally at ASH Offices throughout the region. For a full list of ASH offices see the ASH ''contact us'' page on the FAA's public facing website—*https://www.faa.gov/about/office_org/headquarters_offices/ash/contacts/.*

SYSTEM MANAGER:

Associate Administrator for Security and Hazardous Materials Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Contact information is 202–267–7211.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- Executive Order (E.O.) 13764, Amending Civil Service Rules for Security Clearances
- E.O. 12968, Access to Classified Information.
- E.O. 12829, National Industrial Security Program.
- 49 U.S.C. 44703, enacted as Subtitle E of Pub. L 100–690.
- Transportation Safety Act of 1974 (Pub. L. 93–633, Jan. 3, 1975, 88 Stat. 2156).
- 49 U.S.C. chapter 449, Air Transportation Security, enacted as Pub. L. 103–272.
- Homeland Security Presidential Directive 12 (HSPD–12).
- Federal Information Processing Standard 201: Policy for a Common Identification Standard for Federal Employees and Contractors.

PURPOSE(S) OF THE SYSTEM:

The Investigative Records System serves as a repository of and documents the results and actions of personnel security background investigations of pre and ongoing employment and internal investigations of alleged criminal and civil violations. The purpose of this system is to collect and maintain records regarding:

(1) Security clearance suitability determinations for pre-employment and continuous evaluation; and the issuance of a personal identity verification (PIV) card for physical and logical access to FAA controlled facilities and information systems;

(2) Internal investigative records concerning employees suspected of misconduct; airmen suspected of criminal activity and other FAA certificate holders as defined by 49 U.S.C. 40102(a)(8); and

(3) Individuals that represent a security concern and are temporarily or permanently denied access to FAA facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel Security Background investigations: current and former employees, contractor and subcontractor personnel, applicants of potential employment, interns, employees from other federal agencies on detail, persons and entities performing business with FAA to include consultants, volunteers, and grantees, and sub-grantees, and applicants for FAA-funded programs. Internal investigations: lawful permanent residents, airmen,

instructors, consultants, aircraft owners, flight instructors, airport operators, pilots, mechanics, designated FAA representatives, and other individuals certified by the FAA. Individuals that represent a security concern and are temporarily or permanently denied access to FAA facilities: Current and former FAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results and supporting material for investigations and inquiries conducted by ASH. Categories of records maintained in this systems include but are not limited to SF–85 Questionnaire for Non-Sensitive Positions, SF–85P Questionnaire for Public Trust Positions, and SF–86 Questionnaire for National Security Positions, Office of Personnel Management (OPM) investigation results, resumes, reports from interviews and other inquiries, results of investigations and inquiries, suitability records, financial records, credit reports, medical records, educational institution records, employment records, divorce decrees, criminal records, citizenship status, and violations. These records include the following data about individuals: name, address, date of birth, place of birth, email address, phone number, case number, alien registration number, airmen certificate number, SSN, passport number, driver's license number, biometrics, photographs, fingerprints, license plate number, vehicle identification number, bank account number and credit card number. Additionally, records about FAA employees and contractors may include: FAA line of business, processing region, position, duty station city and state, and contract number.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from current and former employees, contractors, potential employees or applicants, detailees, consultants, investigative reports from other federal agencies, state/local government agencies, law enforcement agencies, medical providers, credit bureaus, educational institutions and instructors. Information may be obtained through in-person interviews with coworkers, neighbors, family members, and acquaintances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System Specific Routine Uses

1. FAA provides to authorized representatives of United States air carriers the results of investigations of an individual that contain information related to aviation safety.

Departmental Routine Uses

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed as a routine use, to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when: (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when: (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. The information contained in this system of records will be disclosed to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials, which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR Section 10.35(a)(9).

7. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

8. DOT may make available to another agency or instrumentality of any

government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress and the public, published by the Director, OMB, dated September 20, 1989.

9. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

10. DOT may disclose records from this system, as a routine use to appropriate agencies, entities and persons when (a) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the, compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between Freedom of Information Act requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

12. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

13. DOT may disclose records from this system, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1), of the Privacy Act.

14. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. Section 485(a)(5)), homeland security information (6 U.S.C., Section 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, (Pub. L. 108–458) and Executive Order, 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OR RECORDS:

Records in this system are stored electronically or in paper copy in a secure area accessed by authorized personnel with a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, date of birth, SSN, and other unique identifiers such as case number, airmen certificate number, passport number, and alien registration number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FAA is in the process of updating the NARA Records Control Schedule NC1–237–77–03 Investigative Case Files, December 22, 1977, to meet current business practices; however, the FAA to will continue to follow current retention schedules that apply to the records that are stored in the system as follows: Item 8, Investigations to locate employee or airmen and airmen and aircraft searches are destroyed upon completion of administrative action or 5 years from date of last entry, whichever is sooner. Other investigations are destroyed 5 years following last completed action of litigation or 5 years from the date of last inquiry or entry into the file. Investigative correspondence files are destroyed 3 years from date of origin. Reports about stolen aircraft and aircraft engaged in illegal activities are destroyed 5 years after creation. Personnel security investigative reports are maintained in accordance with NARA General Records Schedule (GRS) 5.6, Security Records, item 170, and are destroyed 5 years after separation. The copy of the OPM investigation report is destroyed when no longer needed for agency business use or upon employee separation.

Personnel security and access clearance records are maintained in accordance with NARA GRS 5.6 items 180 and 181. GRS 5.6, Item 180, Records of people not issued clearances, are destroyed 1 year after consideration of the candidate ends, but longer retention is authorized if required for business use. GRS 5.6, item 181, Records of people issued clearances, are destroyed 5 years after employee or contractor relationship ends but longer retention is authorized if required for business use. NARA GRS 5.6, item 190, Index to the personnel security case files, are destroyed when superseded or obsolete. NARA GRS 5.6, item 200, Information Security Violation Records are destroyed 5 years after close of case or final action, whichever occurs sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Safeguards for the records within this notice are in accordance with FAA rules and policies, to include all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer

system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Authorized users must use DOT/FAA issued PIV cards to access records, and all user activities on the system is captured in audit logs.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at *https://www.faa.gov/about/office_org/headquarters_offices/ash/contacts/*. When seeking records about yourself from this system of records or any other Departmental system of records your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORD PROCEDURES:

See ''Records Access Procedures'' above.

NOTIFICATION PROCEDURE:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system of records is exempted from certain provisions of the Privacy Act. The purpose of the exemptions is to protect investigatory materials compiled for non-criminal law enforcement purposes. The exemptions claimed for this system are pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5).

HISTORY:

A full notice of this system of records, DOT/FAA 815, Investigative Tracking System, was published in the **Federal Register** on April 11, 2000 (65 FR 19520).

Issued in Washington, DC.

Karyn Gorman,

Acting Departmental Chief Privacy Officer.

[FR Doc. 2022–17943 Filed 8–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Extensions of Credit to Insiders and Transactions With Affiliates

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Extensions of Credit to Insiders and Transactions with Affiliates.''

DATES: You should submit comments by October 21, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0336, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0336'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu. Click on ''Information Collection Review.'' From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0336'' or ''Extensions of Credit to Insiders and Transactions with Affiliates.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and/or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection of information.

Title: Extensions of Credit to Insiders and Transactions with Affiliates.

OMB Number: 1557–0336.

Description: National banks and Federal savings associations must comply with rules of the Board of

Governors of the Federal Reserve System (Board) regarding extensions of credit to insiders (Regulation O) [1] and transactions with affiliates (Regulation W),[2] which implement section 22 and sections 23A and 23B, respectively, of the Federal Reserve Act (FRA).[3] 12 CFR part 31 addresses these transactions for national banks and Federal savings associations. Specifically, 12 CFR 31.2 requires national banks and Federal savings associations to comply with Regulation O, and 12 CFR 31.3 requires national banks and Federal savings associations to comply with Regulation W. Appendix A to part 31 provides interpretive guidance on the application of Regulation W to deposits between affiliated banks.

12 CFR 31.3(c) implements the statutory standards for authorizing an exemption from section 23A of the FRA or section 11 of the Home Owners' Loan Act (HOLA) [4] in accordance with section 608 of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 608, which became effective on July 21, 2012, amended section 23A of the FRA and section 11 of the HOLA to authorize the OCC to exempt, by order, a transaction of a national bank or Federal savings association, respectively, from the affiliate transaction requirements of section 23A and section 11 of the HOLA if: (1) the OCC and the Board jointly find the exemption to be in the public interest and consistent with the purposes of section 23A or section 11 and (2) within 60 days of receiving notice of such finding, the Federal Deposit Insurance Corporation does not object in writing to the finding. Such objection would be based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.[5]

12 CFR 31.3(d) sets forth procedures that a national bank and Federal savings association must follow to request such exemptions. These procedures are modeled after the Board's procedures in Regulation W. A national bank or Federal savings association may request an exemption from the requirements of section 23A or section 11 of the HOLA, as applicable, and 12 CFR part 223 by submitting a written request to the Deputy Comptroller for Licensing with a copy to the appropriate Federal Reserve Bank. The request must:

(1) Describe in detail the transaction or relationship for which the national bank or Federal savings association seeks an exemption;

(2) Explain why the OCC should exempt the transaction or relationship;

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(4) Explain why the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 10 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2022–18004 Filed 8–19–22; 8:45 am]

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[1] 12 CFR part 215.

[2] 12 CFR part 223.

[3] 12 U.S.C. 371c, 371c–1, 375a, and 375b. In addition, section 11 of the Home Owners' Loan Act, 12 U.S.C. 1468, includes certain restrictions on transactions with affiliates that are not included in FRA section 23A.

[4] 12 U.S.C. 1468.

[5] *See* section 608(a)(4)(A)(iv) of the Dodd-Frank Act (exemptive authority for national banks) and section 608(c) of the Dodd-Frank Act (exemptive authority for Federal savings associations).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Senior Executive Service Performance Review Board

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice.

SUMMARY: To announce a list of senior executives who comprise a standing roster that will serve on IRS's Fiscal Year 2022 Senior Executive Service (SES) Performance Review Boards.

DATES: This list is effective September 1, 2022.

FOR FURTHER INFORMATION CONTACT: Sharnetta A. Walton, Director, Office of Executive Services at (202) 317–3817 or Malaika Green, Deputy Director, Office of Executive Services at (202) 317–3823, IRS, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this board shall review and evaluate the initial appraisals of career senior executives' performance and provide recommendations to the appointing authority on performance ratings, pay adjustments and performance awards. The senior executives are as follows:

Victor M. Aledo-Garcia
David P. Alito
Todd A. Anthony
Shahid A. Babar
Scott A. Ballint
Robert J. Bedoya
Michael C. Beebe
Jennifer L. Best
Julia W. Caldwell
Carol A. Campbell
Anthony S. Chavez
Robert Choi
James P. Clifford
Amalia C. Colbert
Erin M. Collins
Lucinda J. Comegys
Kenneth C. Corbin
Robert S. Cox
Thomas A. Cullinan
Brenda A. Dial
Joseph Dianto
Donald C. Drake
Sheila A. Eason
Guy A. Ficco
James L. Fish
Sharyn M. Fisk
Nikole C. Flax
Julie A. Foerster
Jeff D. Gill
Linda K. Gilpin
Dietra D. Grant
Darren J. Guillot
Valerie A. Gunter
Todd L. Harber
Barbara Harris
Keith A. Henley
Robert E. Hill
John E. Hinding
John W. Hinman
Carrie Y. Holland
Karen S. Howard
Teresa R. Hunter
Scott E. Irick
Nikki C. Johnson
William H. Kea, Jr.

Lou Ann Y. Kelleher
Andrew J. Keyso, Jr.
Edward T. Killen
Melanie R. Krause
Kathleen M. Kruchten
James C. Lee
Tracy L. Lee
Ronald J. Leidner, Jr.
Terry L. Lemons
Sunita Lough
Robert W. Malone
Heather C. Maloy
Paul J. Mamo
Kevin Q. McIver
Karen A. Michaels
Kevin M. Morehead
Robin L. Moses
Bryan L. Musselman
Frank A. Nolden
Douglas W. O'Donnell
Victor G. Onorato
Deborah T. Palacheck
Kaschit D. Pandya
Holly O. Paz
Christopher J. Pleffner
Mark E. Pursley
Scott D. Reisher
Bridget T. Roberts
Richard L. Rodriguez
Clifford R. Scherwinski
Frederick W. Schindler
Paul E. Selby
Theodore D. Setzer
Verline A. Shepherd
Tracey L. Showman
Nancy A. Sieger
Susan A. Simon
Eric D. Slack
Harrison Smith
Tommy A. Smith
Guy A. Torres
Jeffrey J. Tribiano
Karen D. Truss
Kathleen E. Walters
Lavena B. Williams
Maha H. Williams
Lisa S. Wilson
Nancy R. Wiltshire
Sheila D. Wright

This document does not meet the Treasury's criteria for significant regulations.

Sharnetta A. Walton,

Director, Office of Executive Services, Internal Revenue Service.

[FR Doc. 2022–18019 Filed 8–19–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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No. 161 August 22, 2022

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Test Procedure for Cooking Products; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–TP–0023]

RIN 1904–AF18

Energy Conservation Program: Test Procedure for Cooking Products

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

ACTION: Final rule; technical correction.

SUMMARY: The U.S. Department of Energy (''DOE'') is establishing a test procedure for a category of cooking products, *i.e.,* conventional cooking tops, under a new appendix. The new test procedure adopts the latest version of the relevant industry standard for electric cooking tops with modifications. The modifications adapt the test method to gas cooking tops, normalize the energy use of each test cycle, include measurement of standby mode and off mode energy use, update certain test conditions, and clarify certain provisions. This final rule retitles the existing cooking products test procedure to specify that it is for microwave ovens only. This final rule also corrects the CFR following an incorrect amendatory instruction in a June 2022 final rule.

DATES: The effective date of this rule is September 21, 2022. The final rule changes will be mandatory for representations of energy use or energy efficiency of a conventional cooking top on or after February 20, 2023.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on September 21, 2022.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-TP-0023.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into appendix I1 to subpart B of part 430:

International Electrotechnical Commission (''IEC'') 62301, ''Household electrical appliances—Measurement of standby power'', first edition, June 2005 (''IEC 62301 First Edition'').

IEC 62301, ''Household electrical appliances—Measurement of standby power'', Edition 2.0, 2011–01 (''IEC 62301 Second Edition'').

IEC 60350–2, ''Household electric cooking appliances Part 2: Hobs—Methods for measuring performance'', Edition 2.1, 2021–05 (''IEC 60350–2:2021'').

Copies of IEC 62301 First Edition, IEC 62301 Second Edition and IEC 60350–2:2021 can be obtained from the International Electrotechnical Commission at 25 W 43rd Street, 4th Floor, New York, NY 10036, or by going to *webstore.ansi.org.*

See section IV.N of this document for further discussion of these standards.

Technical Correction

On June 1, 2022, DOE published the final rule ''Test Procedures for Residential and Commercial Clothes Washers'', effective on July 1, 2022 (87 FR 33316). One of the instructions was intended to update the IEC 62301 Second Edition entry in the centralized IBR section (10 CFR 430.3(p)(6)). However, the amendatory instruction referenced paragraph (o) instead of paragraph (p). (*See* 87 FR 33380.) This final rule, therefore, corrects that error.

Table of Contents

I. Authority and Background

Kitchen ranges and ovens are included in the list of ''covered products'' for which the Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(10)) DOE's regulations at title 10 of the Code of Federal Regulations (''CFR'') part 430 section 2 defines ''cooking products,'' [1] which cover cooking appliances that use gas, electricity, or microwave energy as the source of heat. The section also defines specific categories of cooking products: conventional cooking tops, conventional ovens, microwave ovens, and a term for products that do not fall into those categories: ''other cooking products.'' DOE's energy conservation standards and test procedure for cooking products are currently prescribed at 10 CFR 430.32(j) and 10 CFR part 430 subpart B appendix I (''appendix I''), respectively. Only microwave oven test procedures are currently specified in appendix I. DOE is creating a new test procedure at 10 CFR part 430 subpart B appendix I1 (''appendix I1'') that establishes a test procedure for conventional cooking tops. The following sections discuss DOE's authority to establish test procedures for conventional cooking tops and relevant background information regarding DOE's consideration of test procedures for this product.

[1] DOE established the regulatory term ''cooking products'' in lieu of the statutory term ''kitchen ranges and ovens'' (42 U.S.C. 6292(a)(10)) having determined that the latter is obsolete and does not accurately describe the products considered, which include microwave ovens, conventional ranges, cooking tops, and ovens. 63 FR 48038, 48052 (Sep. 8, 1998).

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include cooking products, and specifically conventional cooking tops, the subject of this document. (42 U.S.C. 6292(a)(10))

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

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

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

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

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including cooking products, 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.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the

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

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

most current versions of IEC 62301 [4] and IEC 62087 [5] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule in satisfaction of the statutory authority specified in EPCA. (42 U.S.C. 6293(b)(1)(A) and 42 U.S.C. 6292(a)(10))

B. Background

As stated, DOE's test procedure for cooking products appears at 10 CFR part 430, subpart B, appendix I (''Uniform Test Method for Measuring the Energy Consumption of Cooking Products''). The current Federal test procedure provides for the testing only of standby power of microwave ovens. There are no provisions for testing conventional cooking tops or conventional ovens. DOE is adopting testing provisions only for conventional cooking tops in this final rule.

DOE originally established test procedures for cooking products in a final rule published in the **Federal Register** on May 10, 1978 (''May 1978 Final Rule''). 43 FR 20108, 20120–20128. In the years following, DOE amended the test procedure for conventional cooking tops on several occasions. Those amendments included the adoption of standby and off mode provisions in a final rule published on October 31, 2012 (77 FR 65942, the ''October 2012 Final Rule'') that satisfied the EPCA requirement that DOE include measures of standby mode and off mode power in its test procedures for covered products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

In a final rule published December 16, 2016 (''December 2016 Final Rule''), DOE amended 10 CFR part 430 to incorporate by reference, for use in the conventional cooking top test procedure, the relevant sections of the Committee for Electrotechnical Standardization (''CENELEC'') Standard 60350–2:2013, ''Household electric appliances—Part 2: Hobs—Method for measuring performance'' (''EN 60350–2:2013''), which uses a water-heating test method to measure the energy consumption of electric cooking tops, and extended the water-heating test method specified in EN 60350–2:2013 to gas cooking tops. 81 FR 91418.

On August 18, 2020, DOE published a final rule (''August 2020 Final Rule'') withdrawing the test procedure for conventional cooking tops. 85 FR 50757. DOE initiated the rulemaking for the August 2020 Final Rule in response to a petition for rulemaking submitted by the Association of Home Appliance Manufacturers (''AHAM'') (''AHAM petition''). AHAM asserted that the then-current test procedure for gas cooking tops was not representative, and, for both gas and electric cooking tops, had such a high level of variation that it did not produce accurate results for certification and enforcement purposes and did not assist consumers in making purchasing decisions based on energy efficiency. 85 FR 50757, 50760; *see also* 80 FR 17944 (Apr. 25, 2018).

At the time of the AHAM petition, the Federal test procedure for cooking tops measured the integrated annual energy consumption of both gas and electric cooking tops based on EN 60350–2:2013.[6] *See,* appendix I of 10 CFR part 430 subpart B edition revised as of January 1, 2020.

DOE withdrew the test procedure for conventional cooking tops in the August 2020 Final Rule based on test data submitted by outside parties indicating that the test procedure for conventional cooking tops yielded inconsistent results.[7] 85 FR 50757, 50760. DOE's test data for electric cooking tops from testing conducted at a single laboratory showed small variations. *Id.* Lab-to-lab test results submitted by AHAM showed high levels of variation for gas and electric cooking tops. *Id.* at 85 FR 50763. DOE determined that the inconsistency in results of such testing showed the results to be unreliable, and that it was unduly burdensome to require cooking top tests be conducted using that test method without further study to resolve those inconsistencies. *Id.* at 85 FR 50760.

DOE conducted two sets of round robin testing and published a notice of proposed rulemaking (''NOPR'') on November 4, 2021, (''November 2021 NOPR''), at which time one set had been completed. The November 2021 NOPR proposed to re-establish a conventional cooking top test procedure. 86 FR 60974. DOE proposed to adopt the latest version of the relevant industry standard published by the International Electrotechnical Commission (''IEC''), Standard 60350–2 (Edition 2.0 2017–08), ''Household electric cooking appliances—Part 2: Hobs—Methods for measuring performance'' (''IEC 60350–2:2017''), with modifications. The modifications would adapt the test method to gas cooking tops, offer an optional method for burden reduction, normalize the energy use of each test cycle, include measurement of standby mode and off mode energy use, update certain test conditions, and clarify certain provisions. *Id.* The November 2021 NOPR also presented the results of an initial round robin test program initiated in January 2020 (''2020 Round Robin'') to investigate further the water-heating approach and the concerns raised in the AHAM petition.[8] *Id.* at 86 FR 60979–60980. The comment period for the November 2021 NOPR was initially set to close on January 3, 2022. *Id.* at 86 FR 60974.

DOE published a notice of data availability (''NODA'') on December 16, 2021, (''December 2021 NODA'') in which DOE announced that it had published the results of a second round robin test program initiated in May 2021 (''2021 Round Robin'') and extended the comment period for the November 2021 NOPR until January 18, 2022. 86 FR 71406. In response to a stakeholder request,[9] on January 18, 2022, DOE published a notice further extending the comment period until February 17, 2022. 87 FR 2559.

DOE received comments in response to the November 2021 NOPR and the December 2021 NODA from the interested parties listed in Table I.1.

[4] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[5] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[6] The EN 60350–2:2013 test method was based on the same test methods in the draft version of IEC 60350–2 Second Edition, at the time of publication of the final rule adopting EN 60350–2:2013. Based on comments received during the development of the draft, DOE stated in the December 2016 Final Rule that it expected the IEC procedure, once finalized, would retain the same basic test method as contained in EN 60350–2:2013, and incorporated EN 60350–2:2013 by reference in appendix I. 81 FR 91418, 91421 (Dec. 16, 2016).

[7] DOE later stated in the notice of proposed rulemaking published on November 4, 2021, that not all of the test results submitted by outside parties were from testing that followed all requirements of the DOE test procedure. 86 FR 60974, 60976.

[8] The 2020 Round Robin was ongoing as of the August 2020 Final Rule.

[9] Request from AHAM (EERE–2021–BT–TP–0023–0007) available at *www.regulations.gov/comment/EERE-2021-BT-TP-0023-0007.*

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE NOVEMBER 2021 NOPR AND DECEMBER 2021 NODA

Commenter(s)	Reference in this final rule	Document No. in docket	Commenter type
Anonymous	Anonymous	3	Individual.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center, and Natural Resources Defense Council.	Joint Commenters	11	Efficiency Organizations.
Association of Home Appliance Manufacturers	AHAM	12	Trade Association.
The American Gas Association and the American Public Gas Association.	Joint Gas Associations	18	Utility and Trade Association.
Northwest Energy Efficiency Alliance	NEEA	15	Efficiency Organization.
New York State Energy Research and Development Authority	NYSERDA	10	State Agency.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	14	Utilities.
Samsung Electronics America	Samsung	16	Manufacturer.
UL LLC	UL	17	Certification Laboratory.
Whirlpool Corporation	Whirlpool	13	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[10]

II. Synopsis of the Final Rule

In this final rule, DOE establishes a new test procedure at 10 CFR part 430, subpart B, appendix I1, ''Uniform Test Method for the Measuring the Energy Consumption of Conventional Cooking Products.'' For use in appendix I1, DOE also amends 10 CFR part 430 to incorporate by reference IEC 60350–2 (Edition 2.1, 2021–05), ''Household electric cooking appliances—Part 2: Hobs—Methods for measuring performance'', the current version of the applicable industry standard. Appendix I1:

(1) Reduces the test burden and improves the repeatability and reproducibility [11] of testing conducted to IEC 60350–2:2021 by:

(a) Simplifying the test vessel selection process for electrical cooking tops;

(b) Modifying the room temperature, product temperature, and initial water temperature requirements;

(c) Providing criteria for determining the simmering setting during energy testing; and

(d) Normalizing the per-cycle energy use to account for the water temperature at the end of the simmering period;

(2) Applies IEC 60350–2:2021 to the measurement of gas cooking tops by including:

(a) Specifications for gas supply instrumentation and test conditions;

(b) Test vessel selection based on nominal heat input rate;

(c) Adjustment methods and specifications for the maximum heat input rate; and

(d) Target power density for the optional potential simmering setting pre-selection test;

(3) Provides additional specifications, including:

(a) Definitions for operating modes, product configurations, test settings, test parameters, and instrumentation;

(b) Test conditions, including electrical supply characteristics and water load mass tolerance;

(c) Instructions for product installation according to product configuration; and

(d) Instructions for determining power settings for multi-ring cooking zones and cooking zones with infinite power settings and rotating knobs;

(4) Provides means for measuring cooking top annual energy use in standby mode and off mode by:

(a) Applying certain provisions from IEC 62301, ''Household electrical appliances—Measurement of standby power'', First Edition, 2005–06, and IEC 62301, ''Household electrical appliances—Measurement of standby power'', Edition 2.0 2011–01;

(b) Defining the number of hours spent in combined low-power mode; and

(c) Defining the allocation of combined low-power mode hours to the conventional cooking top component of a combined cooking product; and

(5) Defines the integrated annual energy use metric by specifying the representative water load mass and the number of annual cooking top cycles.

DOE is also adding calculations of annual energy consumption and estimated annual operating cost to 10 CFR 430.23(i) and renaming the test procedure at 10 CFR part 430, subpart B, appendix I to ''Uniform Test Method for Measuring the Energy Consumption of Microwave Ovens.''

Table II.1 summarizes DOE's modifications to the cooking top test procedure compared to the current industry test procedure, as well as the reasons for the provisions in new appendix I1. DOE's reorganization of appendix I is summarized in Table II.2.

[10] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for conventional cooking tops. (Docket No. EERE–2021–BT–TP–0023, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document). Some comment references are from different dockets than the one listed here, in that case, the parenthetical reference will include the docket number as well as the document ID number.

[11] Repeatability refers to test-to-test variability within a single laboratory, on a given unit. Reproducibility, which measures the ability to replicate the findings of others, refers to lab-to-lab variability, on a given unit.

TABLE II.1—SUMMARY OF CHANGES IN THE NEWLY ESTABLISHED TEST PROCEDURE FOR CONVENTIONAL COOKING PRODUCTS RELATIVE TO THE INDUSTRY TEST PROCEDURE INCORPORATED BY REFERENCE

IEC 60350–2:2021 test procedure	Appendix I1 test procedure	Attribution
Addresses only electric cooking tops	Addresses both electric and gas cooking tops, including new provisions specific to gas test conditions, instrumentation, and test conduct.	Include all covered cooking tops.
Includes an incomplete list of definitions	Includes definitions of operating modes, product configurations, test settings, test parameters, and specialty cooking zone.	Improve readability of test procedure.
Installation instructions specify only that the cooking product is to be installed in accordance with manufacturer instructions.	Provides additional detail for the installation instructions, by product configuration, as well as definitions of those configurations.	Improve readability of test procedure.
Does not include provisions for measuring standby mode and off mode energy.	Incorporates provisions of IEC 62301 (first and second editions) to measure standby mode and off mode power and calculate annual combined low-power mode energy.	EPCA requirement.
Specifies a room and starting product temperature of 23 ± 2 degrees Celsius (''°C'').	Specifies a room and starting product temperature of 25 ± 5 °C. Specifies that the temperature must be stable, defines stable temperature, and specifies how to measure the product temperature.	Decrease test burden.
Specifies an initial water temperature of 15 ± 0.5 °C	Specifies an initial water temperature of 25 ± 0.5 °C	Decrease test burden.
Specifies complex requirements for determining test vessel sizes for cooking tops with 4 or more cooking zones, requiring that the set of vessels comprise at least 3 of 4 defined cookware size categories.	Requires the use of the cookware that is closest in size to the heating element size, without consideration of cookware size categories.	Improve readability of test procedure and decrease test burden.
Does not include a tolerance on the mass of the water load.	Specifies a 0.5 gram (''g'') tolerance on the mass of the water load.	Improve repeatability and reproducibility.
The measured energy consumption of the simmering period is not normalized to account for a final water temperature above the nominal 90 °C.	The energy consumption of the simmering period is normalized to represent a final water temperature of exactly 90 °C.	Improve representativeness of test results.
Uses a 1000 g water load to normalize energy consumption.	Uses a 2853 g water load to normalize energy consumption.	Improve representativeness of test results.
Does not calculate annual energy use	Calculates annual energy use based on 418 cooking cycles per year and 31 minutes per cycle.	Provide a representative measure of annual energy consumption.

TABLE II.2—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE FOR MICROWAVE OVENS RELATIVE TO EXISTING TEST PROCEDURE

Existing DOE test procedure	Amended test procedure	Attribution
Appendix I title refers to all cooking products, but includes test procedures only for microwave ovens.	Appendix I title refers only to microwave ovens	Improve readability of test procedure.

DOE has determined that the new test procedure described in section III of this document and adopted in this final rule will produce measurements of energy use that are representative of an average use cycle and are not unduly burdensome to conduct. Discussion of DOE's actions are addressed in detail in section III of this document. Additionally, DOE provides estimates of the cost of testing for industry in section III.N of this document. DOE notes that there are currently no performance-based energy conservation standards prescribed for conventional cooking tops.

The effective date for the new test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Manufacturers will not be required to conduct the test procedure until compliance is required with any future applicable standards that are established, unless manufacturers voluntarily choose to make representations as to the energy use or energy efficiency of a conventional cooking top. To the extent manufacturers make voluntary representations as to the energy use or energy efficiency of a conventional cooking top, representations of energy use or energy efficiency must be based on testing in accordance with the new test procedure beginning 180 days after the publication of this final rule.

III. Discussion

In this final rule, DOE establishes a new test procedure for conventional cooking tops in a new appendix I1, ''Uniform Test Method for Measuring the Energy Consumption of Conventional Cooking Products.'' The test procedure is based primarily on an industry standard for measuring the energy consumption of electric cooking tops, IEC 60350–2:2021, with certain adjustments and clarifications, as discussed in the following sections of this document. Although IEC 60350–2:2021 applies only to electric cooking tops, the methodology is extended to gas cooking tops by means of additional instrumentation and test setup provisions.

DOE is also renaming existing appendix I to ''Uniform Test Method for Measuring the Energy Consumption of Microwave Ovens'' to clarify that it applies only to microwave ovens.

A. General Comments

Whirlpool supported AHAM's comments on the November 2021 NOPR. (Whirlpool, No. 13 at p. 2) The Joint Gas Associations agreed with the amendments that AHAM recommended in response to the November 2021 NOPR. (Joint Gas Associations, No. 18 at p. 2)

An anonymous commenter expressed general support for a new test procedure that creates a standardized measure of energy consumption of cooking products. (Anonymous Commenter, No. 3 at p. 1)

Samsung supported DOE's establishing energy conservation standards and considering applicable tolerances for certification and compliance for electric cooking tops, based on the round robin test results. (Samsung, No. 16 at p. 2) Samsung also encouraged DOE to move forward in finalizing the test procedure for electric cooking tops, stating that this could help advance ENERGY STAR recognition of induction cooking tops in the near future, which would also be important for significant potential decarbonization and electrification through induction cooking. (Samsung, No. 16 at p. 3)

NYSERDA commented that DOE should re-institute a test procedure for electric and gas cooking tops as soon as possible. (NYSERDA, No. 10 at p. 1) According to NYSERDA, the test procedure withdrawal was unsupported by DOE's test results and data, and has left a void in the market for products introduced since October 2019 that have not been subjected to test procedures and have been sold to consumers. (*Id.*)

NEEA expressed general support for the proposed test procedure. (NEEA, No. 15 at p. 1)

The CA IOUs supported re-adoption of a test procedure for cooking products and encouraged DOE to swiftly finalize this rulemaking, commenting that the proposed modifications to the test procedure would mitigate the repeatability, reproducibility, and representativeness concerns of the withdrawn test procedure while also reducing the testing burden. (CA IOUs, No. 14 at p. 1)

The Joint Commenters supported the test methods proposed in the November 2021 NOPR. They urged DOE to finalize the test procedures for cooking tops as soon as possible to allow the Department to develop standards that can deliver large energy savings. (Joint Commenters, No. 11 at p. 1)

The Joint Commenters also encouraged DOE to initiate work to develop a test procedure for conventional ovens, noting that there are no test procedures or performance-based standards in place for conventional ovens. (Joint Commenters, No. 11 at p. 4) The Joint Commenters stated that developing a test procedure for conventional ovens would allow DOE to set performance-based standards for conventional ovens, which could lead to significant energy savings. (*Id.*)

DOE notes that the scope of this rulemaking and of this final rule is limited to test procedures for cooking tops. The development of any potential test procedure for conventional ovens would be considered in a separate rulemaking.

The Joint Gas Associations commented that the proposed DOE test procedures for cooking tops do not appear to produce reliable and repeatable results. (Joint Gas Associations, No. 18 at p. 2) To remedy this, the Joint Gas Associations support the changes recommended by AHAM. (*Id.*)

AHAM commented that the proposed rule does not comply with the EPCA requirements at 42 U.S.C. 6293(b)(3) that new and amended test procedures produce accurate results that measure energy efficiency during a representative average use cycle or period of use and are not unduly burdensome to conduct. (AHAM, No. 12 at p. 2) AHAM also stated that the proposed rule does not comply with the Administrative Procedure Act requirement that a rule not be arbitrary and capricious. (*Id.*) AHAM further commented that the November 2021 NOPR lacks supporting data on the record other than in summary form and is not the detailed data necessary to assess DOE's proposal and support its conclusion that the proposed test procedure sufficiently addresses repeatability and reproducibility. (AHAM, No. 12 at pp. 5–6)

In evaluating whether the adopted test procedure is reasonably designed to produce test results which measure energy efficiency and energy use of conventional cooking tops, DOE relied, in part, on the data presented in the November 2021 NOPR and the December 2021 NODA. This final rule is supported by rigorous and substantive testing conducted over 6 months at four different testing laboratories that included both round robin testing and additional investigative testing. As discussed in the following sections, DOE has determined that the evaluated test data demonstrate that the test procedure is repeatable and reproducible for both electric and gas cooking tops (see discussion in section III.D.1 of this document). In this final rule, DOE determines that this test procedure is accurate and measures energy use during a representative average use cycle (see discussions in sections III.E.1, III.F.3, III.G.2, and III.K.1 of this document). DOE further determines in this final rule that the test procedure is not unduly burdensome (see section III.N of this document).

AHAM requested that DOE provide 180 days between the publication of the final test procedure and the end of the comment period on proposed energy conservation standards for conventional cooking products. (AHAM, No. 12 at p. 8) AHAM further requested that DOE not issue a proposed rule on standards until after publishing a notice of data availability or other subsequent document subject to notice and comment that provides updated test data from DOE's own testing, preferably including data from AHAM members' testing as well. (*Id.*)

AHAM commented that DOE could satisfy its commitment to rectify its missed statutory deadline by finalizing a rule not amending energy conservation standards for cooking products due to the lack of a test procedure, stating that doing so would allow DOE to separately finalize a test procedure and consider whether further amended standards are justified. (AHAM, No. 12 at p. 6) AHAM commented that EPCA requires DOE to review determinations not to amend energy conservation standards ''not later than 3 years after'' the determination, stating that 3 years at most would pass before DOE would revisit possible amended standards if it published a final rule not amending cooking product energy conservation standards. (*Id.*) AHAM commented that DOE could review standards at any time before that, should a test procedure be completed sooner, which AHAM asserted was likely. (*Id.*)

AHAM commented that it has convened a task force (''Task Force'') [12] that has worked to develop an industry test method that would improve the repeatability and reproducibility of the test and to decrease what AHAM characterized as significant test burden. (AHAM, No. 12 at pp. 4–5) AHAM commented that its Task Force has worked to develop a test method that meets DOE's requirements under EPCA. (AHAM, No. 12 at p. 4) AHAM acknowledged that there are some improvements in the test procedure as proposed in the November 2021 NOPR, but stated that there are potential sources of variation that need to be resolved before DOE finalizes a cooking top test procedure. (AHAM, No. 12 at p. 5) AHAM noted that the determination to withdraw the cooking top test procedure was one of the rulemakings

[12] The AHAM cooking product task force includes AHAM member manufacturers, a representative of the Appliance Standard Awareness Project, and DOE staff and contractors. The first meeting of the Task Force was in January 2021. The Task Force has been developing test procedures for both electric and gas cooking tops.

specified for review by December 31, 2021, under Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' (*Id.*) AHAM requested that DOE allow AHAM to complete its data collection efforts and then proceed with this rulemaking according to the data, rather than continue to work in parallel to the Task Force. (*Id.*)

DOE based the test procedure proposed in the November 2021 NOPR on the then-current version of the Task Force draft procedure. In particular, DOE notes that the test procedure proposed in the November 2021 NOPR includes several revisions to IEC 60350–2 methodology suggested by Task Force members. One is the simplification of the test vessel selection for electric cooking tops (see section III.E.1 of this document). A second is the expanded ambient room temperature range (see section III.E.2.a of this document). A third is the updated initial water temperature (see section III.E.2.c of this document). A fourth is the use of a flow chart to determine the simmering setting (see section III.E.3 of this document). A fifth is the normalization of the per-cycle energy use based on the final water temperature (see section III.E.4 of this document). Generally, DOE has addressed concerns that AHAM has raised. These include the repeatability and reproducibility of the test procedure (see section III.D.1 of this document), the potential effects of test vessel warpage (see section III.H.3 of this document), and the test burden (see sections III.K.1 and III.N of this document).

DOE is finalizing this test procedure having determined that it meets the EPCA criteria that a test procedure be reasonably designed to produce test results which measure the energy use of a covered product during a representative average use cycle, without being unduly burdensome to conduct. DOE discusses in detail the adopted test procedure and addresses specific comments in the following sections.

B. Scope of Applicability

This rulemaking applies to conventional cooking tops, a category of cooking products which are household cooking appliances consisting of a horizontal surface containing one or more surface units that utilize a gas flame, electric resistance heating, or electric inductive heating. 10 CFR 430.2. A conventional cooking top includes any conventional cooking top component of a combined cooking product. *Id.*

As discussed in section I.A of this document, EPCA authorizes DOE to establish and amend test procedures for covered products (42 U.S.C. 6293(b)) and identifies kitchen ranges and ovens as a covered product. (42 U.S.C. 6292(a)(10)) In a final rule published on September 8, 1998 (63 FR 48038), DOE amended its regulations in certain places to replace the term ''kitchen ranges and ovens'' with ''cooking products.'' DOE regulations currently define ''cooking products'' as consumer products that are used as the major household cooking appliances. Cooking products are designed to cook or heat different types of food by one or more of the following sources of heat: gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units and/or one or more heating compartments. 10 CFR 430.2.

Certain household cooking appliances combine a conventional cooking product component with other appliance functionality, which may or may not perform a cooking-related function. Examples of such ''combined cooking products'' include a conventional range, which combines a conventional cooking top and one or more conventional ovens; a microwave/conventional cooking top, which combines a microwave oven and a conventional cooking top; a microwave/conventional oven, which combines a microwave oven and a conventional oven; and a microwave/conventional range, which combines a microwave oven and a conventional oven in separate compartments and a conventional cooking top. A combined cooking product that consists of multiple classes of cooking products is subject to multiple standards. Any established energy conservation standard applies to each individual component of such a combined cooking product. As determined in the December 2016 Final Rule, the cooking top test procedure applies to the individual conventional cooking top portion of a combined cooking product. *See* 81 FR 91418, 91423.

As discussed in the December 2016 Final Rule, DOE observed that for combined cooking products, the annual combined low-power mode energy consumption can be measured only for the combined cooking product, not for the individual components. 81 FR 91418, 91423. As discussed in section III.J.3 of this document, DOE is establishing similar methods to those adopted in the December 2016 Final Rule to calculate the integrated annual energy consumption of the conventional cooking top component separately. DOE's approach involves allocating a portion of the combined low-power mode energy consumption measured for the combined cooking product to the conventional cooking top component using the estimated annual cooking hours for the given components of the combined cooking product.

C. Round Robin Test Results

In January 2020, DOE initiated the 2020 Round Robin test program to investigate further the repeatability and reproducibility of the water-heating approach in the then-current version of appendix I and to evaluate issues raised in the AHAM petition. DOE presented the results of the 2020 Round Robin in the November 2021 NOPR. 86 FR 60974, 60979. Four laboratories with experience testing cooking products tested a total of ten cooking tops—five electric units [13] and five gas units—according to the then-current version of appendix I. *Id.* Except as noted in the November 2021 NOPR, for each unit tested, each laboratory conducted three complete tests (*i.e.,* three replications of the DOE test procedure) [14] to determine the annual energy consumption (excluding combined low-power mode energy), yielding a coefficient of variation (''COV'') [15] that can be used to assess the repeatability [16] of results. *Id.* The averages between the laboratories were also compared to determine a COV of reproducibility.[17] *Id.*

The results from the 2020 Round Robin are summarized as follows. For electric cooking tops, the test results showed repeatability COVs ranging from 0.1 to 1.5 percent and reproducibility COVs ranging from 1.5 to 2.7 percent.[18] 86 FR 60974, 60980. For gas cooking tops, the test results showed repeatability COVs ranging from 0.3 to 3.7 percent and reproducibility COVs ranging from 4.0 to 8.9 percent. *Id.*

Following the August 2020 Final Rule, DOE initiated another round robin test program in response to changes to

[13] Among the five electric cooking tops, two were induction technology, two were radiant technology, and one was electric resistance coil technology.

[14] As detailed in the November 2021 NOPR, not all ten units were tested at all four participating laboratories. Table III.1 of the November 2021 NOPR details which units were tested at which laboratories. Further details regarding testing can be found in section III.K.3 of this document.

[15] COV is a statistical measure of the dispersion of data points around the mean. A lower COV indicates less variation in results.

[16] Repeatability refers to test-to-test variability within a single lab, on a given unit.

[17] Reproducibility refers to lab-to-lab variability, on a given unit.

[18] Among test laboratories identified in the November 2021 NOPR as ''certified,'' reproducibility COVs ranged from 0.4 percent to 1.9 percent.

electric cooking tops on the market [19] and to evaluate variability in testing gas cooking tops. DOE presented the results of this 2021 Round Robin in the December 2021 NODA. 86 FR 71406, 71407. Four laboratories [20] with recognized experience testing cooking products tested a total of five cooking top units—four gas cooking tops and one electric (resistance coil-type) cooking top that meets the most recent version of the relevant industry safety standard (*i.e.,* UL 858)—according to the test procedure proposed in the November 2021 NOPR.[21] For each unit tested, each laboratory conducted two complete tests (*i.e.,* two replications of the proposed test procedure) to determine the annual energy consumption (excluding combined low-power mode energy).

The results from the 2021 Round Robin are as follows. For the electric-coil cooking top, the results showed repeatability COVs ranging from 0.3 to 0.5 percent (compared to a range of 0.4 to 0.7 percent from the 2020 Round Robin) and a reproducibility COV of 2.4 percent (compared to 2.7 percent from the 2020 Round Robin). 86 FR 60974, 60980 and 86 FR 71406, 71407.[22] For the gas cooking tops, the test results showed repeatability COVs ranging from 0.004 to 1.7 percent (compared to a range of 0.3 to 3.7 percent from the 2020 Round Robin) and reproducibility COVs ranging from 3.3 to 5.3 percent (compared to a range of 4.0 to 8.9 percent from the 2020 Round Robin). *Id.* at 86 FR 71407–71408.

In response to the November 2021 NOPR and December 2021 NODA, AHAM commented that DOE had not provided sufficient data. In particular, AHAM asserted the data DOE provided was insufficient to support its analysis or to allow commenters to fully understand, interpret, or analyze the proposed test procedure and provide meaningful comment. (AHAM, No. 12 at p. 6) AHAM commented that DOE's failure to fully disclose its data in this rulemaking would be a mistake and urged DOE to provide complete disclosure and time for comment. (*Id.*) AHAM requested that DOE provide its full, raw data on the record for stakeholder review, not just high-level results. (AHAM, No. 12 at p. 7) AHAM stated that the data summaries provided by DOE were helpful but do not provide the ability to understand what occurred during testing or to conduct an independent review of the data. (*Id.*) AHAM commented that without second-by-second data from DOE, it is unable to fully evaluate DOE's results and provide meaningful comments. (*Id.*) AHAM commented that it is collecting data to evaluate DOE's proposed test procedure and hopes to provide the investigative test data in detail to supplement comments on the test procedure. (*Id.*)

The CA IOUs commented that they also plan to test electric and gas cooking tops to further evaluate the proposed test procedure's repeatability, reproducibility, and representativeness. (CA IOUs, No. 14 at p. 9) The CA IOUs commented that they will share the results of this testing as it is completed. (*Id.*)

The CA IOUs commented that the 2021 Round Robin results highlight the efficacy of the amendments proposed by DOE in the November 2021 NOPR in improving repeatability and reproducibility of the cooking top test procedure. (CA IOUs, No. 14 at p. 2) The CA IOUs commented that in comparison to the 10-percent uncertainty allowance for repeatability in other test methodologies such as the American Society for Testing and Materials (''ASTM'') test methods used in the ENERGY STAR program, the revised DOE test methodology has shown exceptional repeatability and reproducibility results. (*Id.*) The CA IOUs supported the improvements made to the test method, stating that the test procedure constitutes a reasonable, repeatable and reproducible method. (*Id.*)

NYSERDA commented that DOE's proposal effectively addresses any concerns with the prior procedure, stating that the modifications proposed in the November 2021 NOPR reduce the variability in repeatability and reproducibility as compared to the previous test procedure. (NYSERDA, No. 10 at p. 2)

Samsung supported DOE's efforts after the previously withdrawn test procedure to further develop the test procedure for conventional cooking tops to address concerns expressed by stakeholders to improve repeatability and reproducibility and to reduce test burden. (Samsung, No. 16 at p. 2) Samsung commented that the repeatability and reproducibility COV values for electric and gas cooking tops based on the 2021 Round Robin significantly mitigate the repeatability and reproducibility concerns raised previously. (*Id.*)

AHAM expressed its long-held position that any COV greater than 2 percent for the reproducibility of testing cooking top energy use from laboratory to laboratory is unacceptable. (AHAM, No. 12 at p. 8) AHAM asserted that, while it appreciates DOE's efforts to reduce variation, those efforts have not reduced variation enough and that the reproducibility COVs presented in DOE's data are still too high. (*Id.*) AHAM commented that DOE's data show that the variation in gas cooking top testing is not similar to the variation in electric cooking top testing, and asserted that more work is necessary before DOE can proceed with the test procedure. (AHAM, No. 12 at pp. 8–9) According to AHAM, the industry insists on more narrow reproducibility than was measured during the 2021 Round Robin, stating that a higher COV is likely to increase the risk of potential non-compliance (*e.g.,* where a certifying body finds a unit's performance to be acceptable, but verification testing identifies potential non-compliance). (*Id.*) AHAM urged DOE to allow the Task Force to complete its test plan and to consider its test results in this rulemaking. (AHAM, No. 12 at p. 9) AHAM commented that it hopes the testing will be completed by September 2022. (AHAM, No. 12 at p. 10).

DOE notes that in addition to the extensive test data made public as part of the November 2021 NOPR and the December 2021 NODA, DOE has also posted to the rulemaking docket the detailed test reports upon which the summary tables presented in the December 2021 NODA were based, in response to AHAM's request that DOE provide its full, raw data.[23] These data and test reports represent testing of cooking tops from multiple manufacturers, across all available technologies, at multiple testing laboratories. The breadth of products represented in DOE's data set, together

[19] On June 18, 2015, UL issued a revision to its safety standard for electric ranges—UL 858 ''Household Electric Ranges Standard for Safety'' (''UL 858'')—that added a new performance requirement for electric-coil cooking tops intended to address unattended cooking. This revision had an effective date of April 4, 2019. Because the electric-coil cooking top in the 2020 Round Robin was purchased prior to that effective date, DOE could not be certain whether that test unit contained design features that would meet the performance specifications in revised version of UL 858. To address the lack of test data on electric-coil cooking tops that comply with the revised UL 858 safety standard, DOE included one electric-coil cooking top meeting the 2015 revision of UL 858 in the 2021 Round Robin. 86 FR 71406, 71407.

[20] Three of the test laboratories which participated in the 2020 Round Robin also participated in the 2021 Round Robin.

[21] As detailed in the December 2021 NODA, not all five units were tested at all four participating laboratories. The data tables accompanying the December 2021 NODA detail which units were tested at which laboratories.

[22] See also the table of results for the 2021 Round Robin available at *www.regulations.gov/document/EERE-2021-BT-TP-0023-0004*.

[23] Available at *www.regulations.gov/docket/EERE-2021-BT-TP-0023/document,* items number 19, 20, 21, and 22.

with the data and test reports published to the rulemaking docket, provide the foundation for the conclusions presented in the discussion that follows. DOE welcomes any additional data that AHAM, the CA IOUs, or any other stakeholder is able to share, and DOE will consider any such data as part of the ongoing energy conservation standards rulemaking.

DOE is required to establish test procedures that are reasonably designed to produce test results which measure energy efficiency and energy use of covered products, including conventional cooking tops, during a representative average use cycle or period of use, as determined by the Secretary, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE seeks improved repeatability and reproducibility of a test procedure (as measured by a decrease in the COVs), which has two potential benefits related to this obligation. First, representativeness potentially improves because there is more certainty that the measured results reflect representative use of the product under test. Second, test burden potentially decreases, because fewer test replications may be necessary to obtain certainty in the results.

Regarding AHAM's comment that the results of the gas cooking top testing do not demonstrate similar variation to the electric cooking top testing, DOE acknowledges the generally higher reproducibility COVs for gas cooking tops as compared to electric cooking tops and that in the 2021 Round Robin the reproducibility COV of 5.3 percent for one of the gas cooking tops was higher than the reproducibility COVs of the three other gas cooking tops (3.3, 3.6, and 3.6 percent). However, these differences reflect the inherent differences between electric and gas cooking tops. In particular, a gas cooking top's performance variability is greater than that of an electric cooking top due to inherent factors that do not affect electric products. These include variation in the gas composition, air flow mix, or other components of the combustion system. In effect, a certain amount of variation in test results for a gas cooking top is expected; this variation reflects actual variation in performance of the product. The test procedure is capturing variation in the product's actual performance, not demonstrating a lack of repeatability and reproducibility in the test procedure.

DOE has determined that the 2021 Round Robin test results demonstrate that the representativeness of the test procedure proposed in the November 2021 NOPR and finalized in this final rule for gas cooking tops (see discussion of gas-specific provisions in section III.F of this document) is not negatively impacted by repeatability and reproducibility concerns. In particular, the test procedure proposed in the November 2021 NOPR demonstrates significantly improved repeatability and reproducibility compared to the testing methodology used for the 2020 Round Robin. As discussed, the repeatability COVs for the 2021 Round Robin for gas cooking tops ranged from 0.004 to 1.7 percent (compared to a range of 0.3 to 3.7 percent from the 2020 Round Robin) and reproducibility COVs ranged from 3.3 to 5.3 percent (compared to a range of 4.0 to 8.9 percent from the 2020 Round Robin).

DOE has also determined that the 2020 Round Robin and 2021 Round Robin test results demonstrate that the representativeness of DOE's test procedure for electric cooking tops is not negatively impacted by repeatability and reproducibility concerns. The 2021 Round Robin test results demonstrate specifically that these findings hold true for electric coil-type products that meet the revised UL 858 safety standard. As discussed, the repeatability COVs for coil-type electric cooking tops ranged from 0.3 to 0.5 percent and the reproducibility COV was 2.4 percent.

There are changes that potentially could further improve repeatability and reproducibility. These include narrower tolerances on testing conditions and greater accuracy on instrumentation. However, such increased stringencies would likely increase the testing burden and could make it more difficult to conduct a valid test.

For gas cooking tops, tighter tolerances on gas specifications than those proposed in the November 2021 NOPR [24] could decrease variability. 86 FR 60974, 60987. However, as explained below, this would not be feasible because test laboratories may not have control over the higher heating value of their gas supply if they do not choose to use bottled gas with a certified gross heating value.

DOE research suggests that third-party laboratories use either municipal line natural gas or bottled natural gas for their natural-gas-fired combustion testing. Either source may have a higher heating value that varies from the nominal 1,025 Btu per standard cubic foot for natural gas specified in the November 2021 NOPR. The Environmental Protection Agency suggests the typical range is 950–1,050 Btu per standard cubic foot.[25] The higher heating value will depend on the specific mix of gases in the natural gas line, which is a function of the origin of the natural gas. Because test laboratories do not have control over the line gas's heating value, specifying a tolerance on the natural gas heating value would not be feasible.

One way to minimize higher heating value variability from test-to-test and from lab-to-lab is to specify reference gases to be very pure (*i.e.,* over 99% methane). However, requiring the use of methane would impose burdens on test laboratories. Methane is substantially more costly per cubic foot than natural gas [26] and would require a dedicated bottled gas supply. Test laboratories currently using municipal line gas would need to make significant investments, such as purchasing gas bottle storage cabinets and controllers for flammable gases. For test laboratories currently using bottled natural gas for other gas-fired appliances (*e.g.,* clothes dryers, water heaters, furnaces), requiring the use of methane for testing cooking tops would create additional logistical burden, because they would need to keep track of multiple kinds of gas bottles.

In summary, DOE has determined that any potential improvement in repeatability and reproducibility of the test procedure that could be achieved by requiring the use of pure methane would be outweighed by the additional cost and burden that would be imposed on test laboratories, and therefore requiring the use of pure methane would be unduly burdensome.

Other alternatives suggested by AHAM would significantly affect the test procedure's representativeness (as discussed in section III.K.1 of this document).

In this final rule, DOE determines that the test procedure established in this

[24] The gas specifications proposed in the November 2021 NOPR only required an approximate higher heating value of 1,025 British thermal units (''Btu'') per standard cubic foot when testing with natural gas or an approximate higher heating value of 2,500 Btu per standard cubic foot when testing with propane.

[25] *www.epa.gov/sites/default/files/2020-09/documents/1.4_natural_gas_combustion.pdf.*

[26] DOE research found typical prices of bottled methane with purity of 99.0 percent or greater, intended for laboratory usage, ranging from approximately $0.50 to $1.50 per cubic foot of methane, depending on cylinder size and purity. Methane, with a gross heating value of 1,011 Btu/ft^3, is the primary constituent of natural gas and is thus typically used for testing products designed to operate with natural gas. In contrast, the U.S. Energy Information Administration's U.S. monthly commercial price of natural gas for January 2022 was $9.76 per thousand cubic feet, or $0.00976 per cubic foot. (See *www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm.*) Therefore, the cost of bottled methane for a testing laboratory would be roughly 50–150 times that of natural gas from a municipal line.

final rule is reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a cooking top during a representative average use cycle and is not unduly burdensome to conduct.

D. Incorporation by Reference of IEC 60350–2:2021 for Measuring Energy Consumption

1. Water-Heating Test Methodology

In the November 2021 NOPR, DOE proposed to create a new appendix I1 that would generally adopt the test procedure in IEC 60350–2:2017, which is an industry test procedure that measures the energy consumption of a cooking top using a water-heating method. 86 FR 60974, 60979. In the IEC 60350–2:2017 test method (and the updated IEC 60350–2:2021 test method), each heating element is tested individually by heating a specified water load in a standardized test vessel at the maximum power setting until the temperature of the water, including any overshoot after reducing the input power, reaches 90 °C (*i.e.,* the ''heat-up period'').[27] At that time, the power is reduced to a lower setting so that the water temperature remains as close to 90 °C as possible, without dropping below that temperature threshold, for a 20-minute period (*i.e.,* the ''simmering period'').[28] Energy consumption is measured over the entire duration of the initial heat-up period and 20-minute simmering period, which together comprise the Energy Test Cycle for that heating element. The energy consumption for each heating element is normalized by the weight of the tested water load and averaged among all tested heating elements to obtain an average energy consumption value for the cooking top, as discussed in section III.J.1 of this document.

The approach DOE proposed in the November 2021 NOPR for new appendix I1, IEC 60350–2:2017 (on which the November 2021 NOPR was based), and IEC 60350–2:2021 (on which this final rule is based) are all similar to the approach used in the earlier DOE test procedure as established in the December 2016 Final Rule, which incorporated certain provisions from EN 60350–2:2013. *Id.* A more detailed comparison of IEC 60350–2:2021, IEC 60350–2:2017 and EN 60350–2:2013 is provided in section III.D.2 of this document.

In the November 2021 NOPR, DOE proposed to use a water-heating method, based primarily on IEC 60350–2:2017, to measure cooking top energy consumption, but with modifications to extend the test methodology to gas cooking tops and to reduce the variability of test results, as discussed in sections III.D.2.d through III.G of this document. 86 FR 60974, 60980.

UL supported DOE's efforts to review and update the test procedure for cooking products and of DOE leveraging existing procedures such as IEC 60350–2:2017. (UL, No. 17 at p. 1)

Samsung supported the proposed test procedure for cooking tops based on the IEC water-heating test methodology. (Samsung, No. 16 at p. 2)

AHAM generally agreed with DOE's proposed determination to rely on a water boiling test. (AHAM, No. 12 at p. 3)

For the reasons discussed in November 2021 NOPR, DOE is finalizing its proposal to use a water-heating method, based primarily on the most recent IEC test procedure, to measure cooking top energy consumption.

2. Differences Between IEC 60350–2:2021 and Previous Versions

After the publication of the December 2016 Final Rule, which was based on EN 60350–2:2013, IEC issued IEC 60350–2:2017. In comparison to EN 60350–2:2013, IEC 60350–2:2017 included additional informative methodology for significantly reducing testing burden during the determination of the simmering setting.

As mentioned previously, since the publication of the November 2021 NOPR, IEC has issued an updated test standard, IEC 60350–2:2021. This updated version retains substantively the same provisions for the water-heating methodology evaluated in the November 2021 NOPR, except as addressed in the following sections.

In this final rule, DOE incorporates certain provisions of IEC 60350–2:2021 for measuring the energy consumption of cooking tops. DOE further adopts certain modifications and clarifications to the referenced sections of IEC 60350–2:2021, as discussed in sections III.D.2.d, 0, III.G, III.H, and III.I of this document.

a. Temperature-Averaging

DOE proposed in the November 2021 NOPR to add a definition of ''smoothened water temperature'' to section 1 of new appendix I1, which would specify that the averaged values be rounded to the nearest 0.1 °C, in accordance with the resolution requirements of IEC 60350–2:2017. 86 FR 60974, 60982. DOE also proposed to define smoothened water temperature as ''the 40-second moving-average temperature as calculated in Section 7.5.4.1 of IEC 60350–2:2017, rounded to the nearest 0.1 degree Celsius.'' *Id.*

DOE requested comment on its proposed definition of smoothened water temperature as well as its proposal to require the smoothened water temperature be rounded to the nearest 0.1 °C. *Id.*

The CA IOUs commented that using a 40-second moving average for determining temperatures is a key change proposed in the November 2021 NOPR to increase repeatability of the test procedure. (CA IOUs, No. 14 at pp. 1–2)

NEEA agreed with implementing a 40-second moving average to smoothen the temperature curve, stating that this addresses natural temperature oscillation. (NEEA, No. 15 at p. 2)

For the reasons discussed, DOE is finalizing a definition for smoothened water temperature consistent with the November 2021 NOPR, changing the referenced test procedure to IEC 60350–2:2021.

In the December 2016 Final Rule, DOE discussed that the water temperature may occasionally oscillate slightly above and below 90 °C due to minor fluctuations (*i.e.,* ''noise'') in the temperature measurement. 81 FR 91418, 91430. As DOE further discussed in the November 2021 NOPR, these temperature oscillations may cause difficulty in determining when the 20-minute simmering period starts after the water temperature first reaches 90 °C. 86 FR 60974, 60981. EN 60350–2:2013 did not contain provisions that addressed temperature oscillations. In contrast, IEC 60350–2:2017 introduced (and IEC 60350–2:2021 maintained) the use of ''smoothened'' temperature measurements to minimize the effect of minor temperature oscillations in determining the water temperature.

In the November 2021 NOPR, DOE evaluated the impact of implementing ''smoothened'' water temperature averaging on two aspects of the test procedure: (1) validating that the water temperature at which the power setting is reduced during the simmering test[29] (*i.e.,* the ''turndown temperature'')[30]

[27] *See* discussion of the turndown temperature in sections III.D.2.a and III.G.5 of this document.

[28] *See* discussion of the simmering period in section III.E.3 of this document.

[29] DOE uses the term ''simmering test'' to refer to the test cycle that includes a heat-up period and a simmering period. DOE uses this term to distinguish it from the ''overshoot test'' which refers to the test used to calculate the turndown temperature (see section III.G.5 of this document).

[30] *See* section III.G.5 of this document for a definition and further discussion of turndown temperature.

was within a certain defined tolerance; and (2) the determination of the start of the 20-minute simmering period. 86 FR 60974, 60981.

Regarding validation of the turndown temperature, Section 7.5.2.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 provides a methodology for conducting a preliminary test (the ''overshoot test'') to determine the water temperature at which the power setting will be reduced to the ''simmering setting'' during the subsequent simmering test (*i.e.,* the ''target'' turndown temperature).[31] Section 7.5.3 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies that while conducting the simmering test, the water temperature when the power setting is reduced (*i.e.,* the ''measured'' turndown temperature) must be recorded. Section 7.5.4.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 provides a methodology for validating that the measured turndown temperature was within a tolerance of +1 °C/ − 0.5 °C of the target turndown temperature. Section 7.5.4.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 requires that this validation be performed based on the smoothened water temperature (as described previously) rather than using the instantaneous measured water temperature.

In the November 2021 NOPR, DOE presented test data suggesting that using the smoothened water temperature measurement, rather than the instantaneous water temperature measurement, to validate the measured turndown temperature could introduce unnecessary test burden. That test burden resulted from invalidating test cycles that otherwise would have been valid if the instantaneous water temperature measurement had been used instead (as was previously required by EN 60350–2:2013). 86 FR 60974, 60981. The potential for this to occur is highest for cooking top types that have particularly fast water temperature response times to changes in input power; *e.g.,* electric-smooth radiant and induction types. *Id.* On such products, the rate at which the water temperature rises begins to quickly decrease (*i.e.,* the temperature rise ''flattens'' out) within a few seconds after the power setting is turned down to the simmering setting. *Id.* For such products, the smoothened turndown temperature can be a few degrees lower than the instantaneous turndown temperature because the smoothened water temperature calculation incorporates 20 seconds of forward-looking data into the average, during which time the temperature curve is flattening out. *Id.* This can result in a measured turndown temperature that is within the allowable tolerance of the target turndown temperature based on the instantaneous water temperature, but below the allowable tolerance when determined based on the smoothened average method (and thus invalid according to Section 7.5.4.1 of both IEC 60350–2:2017 and IEC 60350–2:2021). *Id.* On such products, using the instantaneous water temperature, rather than the smoothened water temperature, would provide a more accurate and representative validation that the measured turndown temperature was within the specified tolerance of the target turndown temperature. *Id.*

In the November 2021 NOPR, DOE tentatively determined that the requirement in IEC 60350–2:2017 [32] to use the smoothened water temperature measurement, rather than the instantaneous water temperature measurement, to validate the measured turndown temperature may be unduly burdensome, particularly for electric-smooth radiant and induction cooking tops. *Id.* at 86 FR 60982. Therefore, in the November 2021 NOPR, DOE proposed that new appendix I1 require using the instantaneous water temperature measurement (rather than the smoothened water temperature measurement) to validate that the measured turndown temperature was within +1 °C/ − 0.5 °C of the target turndown temperature. *Id.*

DOE requested comment on its proposal to require that the instantaneous, rather than the smoothened, turndown [33] temperature be within +1 °C/ − 0.5 °C of the target turndown temperature. *Id.* DOE did not receive any comments regarding this proposal.

For the reasons discussed, DOE determines that the provision to use the smoothened water temperature measurement to validate the measured turndown temperature may be unduly burdensome, particularly for electric-smooth radiant and induction cooking tops. Therefore, DOE finalizes its proposal, consistent with the November 2021 NOPR, to require that the instantaneous turndown temperature be within +1 °C/ − 0.5 °C of the target turndown temperature.

Regarding the determination of the start of the 20-minute simmering period,[34] in the November 2021 NOPR, DOE analyzed approaches for determining the start of the simmering period that account for water temperature fluctuations. 86 FR 60974, 60982. Section 7.5.3 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies that the start of the 20-minute simmering period is when the water temperature first meets or exceeds 90 °C. By contrast, the version of appendix I as finalized in the December 2016 Final Rule, which used instantaneous water temperatures, allowed for a brief ''grace period'' after the water temperature initially reached 90 °C. In that grace period, temperature fluctuations below 90 °C for up to 20 seconds were permitted without changing the determination of whether the power setting under test met the requirements for a simmering setting. As part of the November 2021 NOPR analysis, DOE analyzed test data from the 2020 Round Robin. DOE observed that for each simmering setting under test, the smoothened water temperature did not drop below 90 °C after the initial time it reached that temperature. In other words, when using the smoothened water temperature approach described in Section 7.5.4.1 of IEC 60350–2:2017, none of the test cycles that had required a ''grace period'' when evaluated according to the test procedure finalized in the December 2016 Final Rule had smoothened water temperatures below 90 °C after the start of the simmering period. *Id.* Accordingly, in the November 2021 NOPR, DOE proposed to determine the start of the simmering period as defined in Sections 7.5.3 and 7.5.4.1 of IEC 60350–2:2017, using the smoothened water temperature and without any ''grace period.'' *Id.* DOE tentatively concluded in the November 2021 NOPR that a grace period is unnecessary when relying on smoothened water temperature. DOE also tentatively concluded such a provision could cause confusion regarding the start time of the 20-minute simmering period, which in turn could reduce repeatability and reproducibility of the test procedure. *Id.*

[31] *See* section III.G.5 of this document for a definition and further discussion of target turndown temperature.

[32] IEC 60350–2:2021 contains the same requirement.

[33] *See* section III.G.5 of this document for comments pertaining to the definition of turndown temperature.

[34] As discussed in section III.E.3 of this document, the start of the 20-minute simmering period is when the smoothened water temperature is greater than or equal to 90 °C.

DOE requested comment on its proposal to include the requirement to evaluate the start of the simmering period as the time that the 40-second ''smoothened'' average water temperature first meets or exceeds 90 °C. *Id.* DOE did not receive any comments regarding this proposal.

For the reasons discussed, DOE is finalizing, consistent with the November 2021 NOPR, the requirement to evaluate the start of the simmering period as the time that the 40-second ''smoothened'' average water temperature first meets or exceeds 90 °C.

b. Water Hardness

Section 7.1.Z6.1 of EN 60350–2:2013, and Section 7.6 of both IEC 60350–2:2017 and IEC 60350–2:2021, specify that the test water shall be potable. Section 7.5.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 further state that distilled water may be used to avoid lime sediment. DOE tentatively determined in the November 2021 NOPR that the use of distilled water would not significantly affect the energy use of the cooking top in comparison to test results that would be obtained using water with a hardness within potable limits.[35] 86 FR 60974, 60982. This was based on DOE's 2020 Round Robin test results that showed high reproducibility among the test laboratories with different water supplies that were not subject to specific tolerances on water hardness. *Id.* DOE also tentatively determined in the November 2021 NOPR that a reduction in lime sediment could extend the lifetime of the test vessels. *Id.* Therefore, DOE proposed in the November 2021 NOPR to allow the use of distilled water in new appendix I1. *Id.*

DOE requested comment on its proposal to allow the use of distilled water for testing in the new appendix I1. *Id.* DOE did not receive any comments regarding this proposal.

For the reasons discussed, DOE determines that the use of distilled water would not significantly affect the measured energy use of a cooking top in comparison to test results that would be obtained using water with a hardness within potable limits. DOE therefore finalizes its proposal, consistent with the November 2021 NOPR, to allow the use of distilled water for testing in new appendix I1.

c. Cooking Top Preparation

Section 7.1.Z6.1 of EN 60350–2:2013 specifies that before the energy consumption measurement is conducted, the cooking top must be operated for at least 10 minutes to ensure that residual water in the components is vaporized. (Residual water may accumulate in the components during the manufacturing process, shipping, or storage of a unit.) In the past, DOE received questions from test laboratories on how frequently this cooking top pre-test preparation should be conducted. 86 FR 60974, 60982. Section 7.5.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 include a similar requirement and clarify that this vaporization process need only be run once per tested unit. In the November 2021 NOPR, DOE proposed to require that the vaporization process need only be run once per tested unit by adopting the provision in IEC 60350–2:2017 in new appendix I1. This was based on DOE's preliminary determination that conducting the vaporization process once would be sufficient to eliminate residual water. *Id.*

DOE requested comment on its proposal to include the cooking top preparation requirements for water vaporization from IEC 60350–2:2017 [36] in its new appendix I1. *Id.* DOE did not receive any comments regarding this proposal.

For the reasons discussed, DOE has determined that conducting the vaporization process once is sufficient to eliminate residual water. Therefore, consistent with the November 2021 NOPR, DOE is including the cooking top preparation requirements for water vaporization in new appendix I1, changing the referenced test procedure to IEC 60350–2:2021.

d. Optional Potential Simmering Setting Pre-Selection Test

As discussed, DOE is adopting the water-heating methodology in IEC 60350–2:2021. This method requires the evaluation of an Energy Test Cycle, which consists of measuring energy consumption during an initial heat-up period and a subsequent 20-minute simmering period. Conducting the IEC 60350–2:2021 test method requires determining the simmering setting through repeated test cycles, each with a successively higher input power setting after turndown, starting with the lowest input setting. This methodology can require a laboratory to conduct numerous test cycles before identifying the one in which the simmering period criteria are met.

A draft version of IEC 60350–2:2021 included a new Annex H (''draft Annex H''), which provided an informative and optional test method for determining the potential simmering setting (*i.e.,* the first setting used to conduct a simmering test in order to determine the simmering setting). Draft Annex H, available at the time of the November 2021 NOPR, stated that, for electric cooking tops, empirical test data show that the power density of the minimum-above-threshold power setting (*i.e.,* simmering setting) is close to 0.8 watts per square centimeter (''W/cm^2'').[37] The method in draft Annex H provided a means to determine which power setting is closest to the target power density, and thus to more easily identify the first power setting that may be used for determining which power setting will be used for the Energy Test Cycle.

In response to manufacturer concerns regarding the test burden of IEC 60350–2:2017, DOE proposed in the November 2021 NOPR to include provisions in its new appendix I1 that mirrored the language of draft Annex H, with certain modifications to further reduce test burden. 86 FR 60974, 60985. DOE stated that in its testing experience, using this ''pre-selection test'' can significantly reduce the test burden of determining the simmering setting for the Energy Test Cycle. *Id.* Although this would represent an additional procedure, DOE stated that the overall testing time for a cooking top may be substantially shorter because performing the potential simmering setting pre-selection test can reduce the number of simmering test cycles necessary to determine the Energy Test Cycle from as many as 12 to as few as two.[38] *Id.*

In the November 2021 NOPR DOE proposed an approach consistent with that of draft Annex H. During the potential simmering setting pre-selection test, the power density measurement would need to be repeated for each successively higher power setting until the measured power

[35] While the U.S. Environmental Protection Agency (''EPA'') does not regulate the water hardness of drinking water, EPA has established non-mandatory Secondary Drinking Water Standards that provide limits on contaminants that may cause cosmetic effects (such as skin or tooth discoloration) or aesthetic effects (such as taste, odor, or color) in drinking water. These secondary standards specify a maximum limit of 500 milligrams/liter of total dissolved solids. The table of secondary standards is available at*: www.epa.gov/sdwa/secondary-drinking-water-standards-guidance-nuisance-chemicals#table.*

[36] IEC 60350–2:2021 contains an identical provision.

[37] The power density is defined as the average wattage of the power setting over a 10-minute period divided by the area of the cookware bottom.

[38] The potential simmering setting pre-selection tests takes 10 minutes per power setting tested (with no cooldown required between each test), whereas testing each setting as described in IEC 60350–2:2017 takes between 1 and 1.5 hours per power setting tested (including cooldown time between each test).

density exceeds the specified threshold power density. *Id.* The potential simmering setting would be one of the last two power settings tested (*i.e.,* the last one that results in a power density below the threshold and the first one that results in a power density above the threshold. Whichever setting produces a power density closest to the threshold value would be the potential simmering setting. *Id.* The closest power density may be higher or lower than the applicable threshold value. *Id.*

In the November 2021 NOPR, DOE also proposed a modification from draft Annex H to further reduce test burden while achieving the same end result as the procedure specified in draft Annex H. *Id.* at 86 FR 61008. As discussed, the objective of the pre-selection test is to determine which power setting is closest to providing the target power density of 0.8 W/cm^2. Draft Annex H specified a starting water temperature of 20 ± 5 °C for the optional pre-selection test; however, the temperature of the water does not affect the power density of a particular power setting. The two parameters used to determine the power density are a measurement of the surface area of the bottom of the test vessel and the electrical energy consumption during the 10-minute test. The temperature of the water in the test vessel does not affect either of these measured values. Therefore, to reduce the test burden of the simmer setting pre-selection test, as part of its proposal DOE did not specify a water temperature condition for the start of the pre-selection test.[39] *Id.*

In the November 2021 NOPR, DOE further proposed to make the potential simmering setting pre-selection test optional. *Id.* at 86 FR 60985. DOE proposed that if the tester has prior knowledge of the unit's operation and has previously determined through a different method which power setting is the potential simmering setting, the tester may use that setting as the initial power setting for the test cycles. *Id.* Irrespective of the method used for determining the potential simmering setting, a valid test confirms whether the power setting under test meets the requirements of an Energy Test Cycle (see section III.E.3 of this document). *Id.* If a tester decides to use a different method to select the potential simmering setting, and chooses an incorrect power setting, the tester may then be required to conduct additional simmering tests to find the power setting that meets the requirements of an Energy Test Cycle. *Id.*

DOE requested comment on its proposal to include the optional potential simmering setting pre-selection test in new appendix I1. *Id.* DOE also requested comment on its proposal, if a tester has prior knowledge of the unit's operation and has previously determined a potential simmering setting through a different method, to allow the tester to use that as the initial power setting for the test cycles. *Id.*

The Joint Commenters supported DOE's proposal to include an optional simmering setting pre-selection test for both electric and gas cooking top test procedures. (Joint Commenters, No. 11 at p. 3)

The CA IOUs noted that the simmer setting preselection method and test modifications that reduce the need for possible retests will decrease test duration. (CA IOUs, No. 14 at p. 2) The CA IOUs supported DOE's efforts to reduce testing burden by shortening test duration from 36 to 17.5 hours while still maintaining a representative test procedure. (*Id.*)

For the reasons discussed, DOE finalizes its proposal from the November 2021 NOPR to include an optional potential simmering setting pre-selection test in new appendix I1 that mirrors the methodology specified in Annex H of IEC 60350–2:2021,[40] with modifications as proposed and discussed above to further reduce test burden. DOE also finalizes its proposal from the November 2021 NOPR that if the tester has prior knowledge of the unit's operation and has previously determined through a different method which power setting is the potential simmering setting, the tester may use that setting as the initial power setting for the test cycles.

E. Modifications to IEC 60350–2:2021 Methodology To Reduce Testing Burden

1. Test Vessel Selection for Electric Cooking Tops

Section 5.6.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies a set of standardized cylindrical test vessels and respective lids of varying diameters, measured in millimeters (''mm''), that must be used for conducting the cooking top energy consumption tests. Table 3 in Section 5.6.1.5 of both IEC 60350–2:2017 and IEC 60350–2:2021 defines four ''standardized cookware categories'' [41] that are used to group test vessels by diameter range.

Sections 6.3 and 7.3 of IEC 60350–2:2017 and IEC 60350–2:2021 specify a procedure to select the set of test vessels necessary to test an electric cooking top, based on if a cooking zone [42] or a cooking area [43] is being tested. The process requires determining the number of cooking zones based on the number of controls that can be operated independently at the same time. For cooking zones, a tester selects the test vessel based on the cooking zone dimension. To find the cooking zone dimension, the tester measures the marked area on the surface of the cooking top, irrespective of the size of the heating element. For circular cooking zones, the outermost diameter is used; for non-circular cooking zones, the shorter side or the minor axis is used. The tester then matches the cooking zone dimension to the outer diameter of a corresponding test vessel, using Table 3 in Section 5.6.1.5 of both IEC 60350–2:2017 and IEC 60350–2:2021, and makes an initial selection of the corresponding test vessel. For cooking areas, Annex A of both IEC 60350–2:2017 and IEC 60350–2:2021 defines the set of test vessels to use for testing all of the cooking zones on the cooking top, based on the number of cooking zones (*i.e.,* the number of independent controls) within the cooking area.

There are additional requirements for selecting the set of test vessels used for testing a cooking top. Both IEC 60350–2:2017 and IEC 60350–2:2021 specify in Table 4 of Section 7.3 that for electric cooking tops with four or more controls, the set of test vessels used to test the cooking top must comprise at least three of the standardized cookware categories. If the initially selected test vessel set does not meet this criterion, a

[39] See section III.F.5 of this document for a discussion of how this provision was extended to apply to gas cooking tops.

[40] The methodology specified in Annex H of IEC 60350–2:2021 is the same as the methodology specified in draft Annex H.

[41] The four categories are defined as A, B, C, and D. The vessel diameters associated with each category are as follows: Category A: 120 mm and 150 mm; Category B: 180 mm; Category C: 210 mm and 240 mm; and Category D: 270 mm, 300 mm, and 330 mm.

[42] DOE defines a cooking zone in section 1 of new appendix I1 as a part of a conventional cooking top surface that is either a single electric resistance heating element, multiple concentric sizes of electric resistance heating elements, an inductive heating element, or a gas surface unit that is defined by limitative markings on the surface of the cooking top and can be controlled independently of any other cooking area or cooking zone.

[43] DOE defines a cooking area in section 1 of new appendix I1 as an area on a conventional cooking top surface heated by an inducted magnetic field where cookware is placed for heating, where more than one cookware item can be used simultaneously and controlled separately from other cookware placed on the cooking area and that may or may not include limitative markings.

substitution must be made using the next best-fitting test vessel from one of the other standardized cookware categories. If a selected test vessel size is out of the range of the sizes allowed by the user manual, the closest compatible diameter is to be used.

In the November 2021 NOPR, DOE tentatively determined through a market survey of electric cooking tops that the typical difference in diameter between the initial test vessel selection and the substituted test vessel is less than 30 mm. This suggests that the energy consumption will not substantially differ compared to using the test vessel whose diameter is closest to the heating element diameter. In addition, any corresponding difference in measured energy consumption for the entire cooking top will be even more minimal. 86 FR 60974, 60983. Through testing conducted in support of the December 2016 Final Rule, DOE also observed that in some tests, electric cooking tops were tested with the wrong set of test vessels. *Id.* DOE attributes this to the complex test vessel selection process.

In the November 2021 NOPR, DOE proposed to require much simpler test vessel selection criteria for new appendix I1 to reduce the burden of implementing the test vessel selection procedure and thereby improve test procedure reproducibility. *Id.* Specifically, DOE proposed to require that for electric cooking tops with limitative markings, each cooking zone be tested with the test vessel that most closely matches the outer diameter of the marking, from among the test vessels defined in Table 3 in Section 5.6.1.5 of IEC 60350–2:2017. *Id.* For electric cooking tops without limitative markings, DOE proposed to use Table A.1 in Annex A of IEC 60350–2:2017 to determine the set of test vessels required, because without those markings, it is not possible to match the test vessel diameter to the marking's diameter. *Id.* DOE also proposed to exclude the provisions from Section 7.3 of IEC 60350–2:2017 in new appendix I1 to ensure that these approaches are properly implemented. *Id.* If a selected test vessel cannot be centered on the cooking zone due to interference with a structural component of the cooking top (for example, a raised outer border), DOE proposed to require using the test vessel with the largest diameter that can be centered on the cooking zone. *Id.* This process of vessel selection would reflect the expected consumer practice of matching cookware to the size of a heating element (*i.e.,* cookware is placed on the heating element that is the closest in size to the cookware). *Id.*

DOE requested comment on its proposal to update the test vessel selection procedure. Again, for electric cooking tops with limitative markings, the proposal excludes the provisions from Section 7.3 of IEC 60350–2:2017 and instead requires that each cooking zone be tested with the test vessel that most closely matches the outer diameter of the marking. For electric cooking tops without limitative markings, DOE proposed that Table A.1 of Annex A of IEC 60350–2:2017 be used to define the test vessels. *Id.* DOE also requested comment on its proposal for when a structural component of the cooking top interferes with the test vessel to substitute the largest test vessel that can be centered on the cooking zone. *Id.*

NYSERDA supported DOE's effort to simplify the test vessel selection process to ensure repeatability and reproducibility. (NYSERDA, No. 10 at p. 2)

The Joint Commenters agreed with the proposed test vessels and test vessel selection method for electric cooking tops. (Joint Commenters, No. 11 at p. 2) The Joint Commenters asserted that DOE's proposal to exclude the provisions from Section 7.3 of IEC 60350–2:2017 and to simplify the test vessel selection criteria for electric cooking tops are reasonable methods for selecting test vessels. (*Id.*) The Joint Commenters stated that these proposals would improve reproducibility while simplifying the test vessel selection process for manufacturers. (*Id.*) The Joint Commenters encouraged DOE to investigate methods for testing non-circular cooking zones to fully encapsulate the energy consumption of all cooking zones in the test procedure.[44] (*Id.*)

The CA IOUs commented on differences between the vessel selection methods depending on the fuel type of the cooktop. They noted that the electric cooking top test vessel selection criteria contain upper and lower bounds, but the gas cooking top test vessel criteria do not.[45] (CA IOUs, No. 14 at p. 4) The CA IOUs stated that while they are unaware of existing electric cooking tops with heating elements outside of the included scope of diameters (*i.e.,* between 100–330 mm), they do not see any reason that heating elements less than 100 mm or larger than 330 mm should be excluded. (*Id.*) The CA IOUs urged DOE to eliminate the lower and upper bounds of the electric test vessel selection criteria, stating that this would keep the electric and gas cooking top scopes consistent in terms of not excluding products purely based on their size or power rating. (*Id.*)

In response to the CA IOUs' comment comparing the scope of electric and gas cooking tops, DOE notes that in general, gas burners are able to be effectively used with a wider range of pot sizes than electric heating elements. An electric resistance heating element, can only provide effective heat transfer to the area of a pot in direct contact or line of sight with the element because the primary mechanism of heat transfer to the pot is through conduction (*i.e.,* surface contact) or radiation. As such, the range of pot diameters that can be effectively used on an electric resistive heating element is limited by the diameter of the element. Conversely, for a gas burner, the flames are able to provide effective heat transfer to a wide range of pot sizes (and in particular, pots with a diameter substantially larger than the burner) because the primary mechanism of heat transfer to the pot is through convection (*i.e.,* the movement of hot air around the base of the pot). As such, the diameter of a gas burner does not limit the range of pot diameters that can be effectively used. For these reasons, DOE has determined that it is appropriate for the test vessel selection table to define an upper bound for electric heating elements but not for gas burners.

Regarding the lower bound defined for electric cooking tops, DOE notes that a heating element on an electric cooking top with a diameter smaller than 100 mm (3.9 inches) would likely not be able to heat water to 90 °C. As such, it would likely be excluded from testing because it would be a specialty cooking zone (*e.g.,* a warming plate or zone).

For the reasons discussed, DOE finalizes its test vessel selection proposal from the November 2021 NOPR. Again, on an electric cooking top, tests must use the test vessels according to Table 3 of Section 5.6.1.5 of IEC 60350–2:2021 and, if a structural component of the cooking top interferes with the test vessel, substitute the largest test vessel that can be centered on the cooking zone. DOE further specifies that if a structural component of the cooking top interferes with the test vessel such that a test vessel's *lid* cannot be centered on the test vessel due to interference with a structural component of the cooking top, the instruction to substitute the largest test vessel that can be centered on the cooking zone applies.

In the November 2021 NOPR, DOE proposed different instructions for

[44] See further discussion of the definition of specialty cooking zones in section III.G.4 of this document.

[45] See further comments from the CA IOUs regarding gas cooking top test vessel selection criteria in section III.F.3 of this document.

determining test vessel selection in the preamble and regulatory text for cooking areas with limitative markings that differed from the instructions for cooking areas without limitative markings. The preamble was correct; the proposed regulatory text was incorrect. As discussed previously in this section, for cooking areas (regardless of limitative markings), Annex A of both IEC 60350–2:2017 and IEC 60350–2:2021 defines the set of test vessels to be used for testing based on the number of cooking zones (*i.e.,* the number of independent controls) within the cooking area. As indicated by the discussion in section III.C.1 of the preamble to the November 2021 NOPR, DOE intended to propose the same test vessel selection requirements as specified in IEC 60350–2:2017; *i.e.,* to use Annex A of IEC 60350–2:2017 to determine the correct test vessel for testing cooking areas with or without limitative markings.[46] 86 FR 60974, 60983. Although the preamble stated Annex A, the regulatory text for cooking areas with limitative markings incorrectly proposed to use Table 3 in Section 5.6.1.5 of IEC 60350–2:2017. That section corresponds instead to the instructions for circular ''cooking zones.'' *Id.* at 86 FR 61009. In this final rule, DOE corrects this error and specifies that for all cooking areas, the test vessel section is based on the number of cooking zones and as specified in Annex A of IEC 60350–2:2021.

There was another error in the regulatory text as proposed in the November 2021 NOPR. It incorrectly implied that all cooking zones are circular, by requiring measuring their diameter. *Id.* For a non-circular cooking zone, measuring a ''diameter'' would not be appropriate, since ''diameter'' is a dimension limited to a circle. In this final rule, DOE provides instructions for measuring the size of a non-circular cooking zone[47] and selecting the appropriate test vessel, consistent with the language in Section 7.3 of IEC 60350–2:2021. DOE also specifies how to determine the cooking zone size. For circular cooking zones, use the outer diameter of the printed marking, and for non-circular cooking zones, use the measurement of the shorter (*i.e.,* minor) axis.

As part of the 2021 Round Robin, DOE learned that some technicians are uncertain about how to measure the size of an open coil heating element, because open coils are not perfect circles.[48] Indeed, the approach to measure the size of a heating element depends on whether a technician considers the open coil heating elements as circular. If so, the largest diameter would be used to determine the appropriate test vessel, according to Section 6.3.2 of IEC 60350–2:2021. If not, a technician uses the short axis of the ellipse (''the minor dimension'') to determine the appropriate test vessel, according to Sections 6.3.2 and 7.3 of IEC 60350–2:2021. DOE understands that industry practice is to use the largest diameter of an open coil heating element, as presented in Figure 60A.2 of UL 858. In this final rule, DOE clarifies that open coil heating elements are to be treated as circular, and that the largest diameter is used to determine the appropriate test vessel and incorporates an illustration similar to Figure 60A.2 of UL 858.

2. Temperature Specifications

a. Room Temperature

Section 5.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies an ambient room temperature of 23 ± 2 °C for testing. DOE stated in the November 2021 NOPR that it was aware that conducting energy testing on cooking tops in the same conditioned space that safety testing is conducted could significantly reduce testing burden, based on discussions with cooking top manufacturers as part of the Task Force. 86 FR 60974, 60983. Section 40 of UL 858, a relevant safety standard for cooking tops, requires a room temperature of 25 ± 5 °C for certain safety testing that manufacturers are likely conducting.

The IEC ambient room temperature specifications (23 ± 2 °C) are within the range allowed by UL 858 (25 ± 5 °C). DOE stated in the November 2021 NOPR that it did not expect that the slightly different nominal value and larger tolerance on the ambient room temperature (corresponding to the range allowed by UL 858) would significantly impact the measured cooking top energy consumption. *Id.* This was based on DOE's understanding of the primary heat transfer mechanisms to the water load. Those mechanisms are conduction to the test vessel for electric-coil cooking tops; radiation for electric-smooth cooking tops other than induction type; joule heating in the test vessel itself by induced eddy currents for electric-smooth induction cooking tops; and convective heat transfer from the flames and conduction from the grates for gas cooking tops. DOE tentatively determined in the November 2021 NOPR that expanding the ambient temperature tolerance to match that used for safety testing (*i.e.,* 25 ± 5 °C) would be warranted and would not impact repeatability or reproducibility of the test procedure, due to this relatively minimal impact on testing results and the potential for significant reduction in test burden on manufacturers. *Id.* Manufacturers in the Task Force raised concerns that test laboratories could consistently test at the extremes of the temperature tolerances. To address those concerns, DOE proposed in the November 2021 NOPR to specify that the target ambient room temperature is the nominal midpoint of the temperature range. *Id.* DOE proposed to specify in new appendix I1 an ambient room temperature of 25 ± 5 °C, with a target temperature of 25 °C. *Id.*

DOE requested comment on its proposal to specify an ambient room temperature of 25 ± 5 °C. *Id.*

The Joint Commenters supported a target ambient room temperature specification of 25 °C, but expressed concern that it may not prevent test laboratories from testing at extremes of the ±5 °C tolerance, which they stated could potentially affect reproducibility. (Joint Commenters, No. 11 at p. 2) The Joint Commenters encouraged DOE to consider providing instructions on how to best reach the target temperature or more specificity around what it means to target the midpoint of the temperature range. (*Id.*)

NEEA commented that DOE should set a more rigorous ambient temperature specification during the active mode test, stating that an ambient temperature specification of 25 ± 5 °C is too wide to ensure repeatability. (NEEA, No. 15 at p. 1) NEEA commented that specifying a target ambient temperature of 25 °C may not prevent tests from being conducted at the extremes of that range, and that it is unclear whether the differences in applying the current methodology at 20 °C and 30 °C are insignificant. (*Id.*) According to NEEA, an ambient

[46] The only intended difference between the proposed appendix I1 and IEC 60350–2:2017 was the removal of the ''categories'' requirement in Section 7.3 of IEC 60350–2:2017.

[47] DOE makes a distinction between non-circular cooking zones designed for use with any type of cookware (which are discussed in this section), and cooking zones designed for use only with non-circular cookware (which are considered specialty cooking zones, as discussed in section III.G.4 of this document).

[48] As an example of this lack of clarity, one of the test laboratories in the 2021 Round Robin measured a diameter 3mm smaller than the other two laboratories on one heating element size of one cooking top. As a result, the test laboratories used different test vessel sizes. DOE cannot confirm the source of this difference. However, based on an inspection of the coil heating element in question, it is DOE's understanding that one laboratory measured the diameter as the smallest width of the coil, and the other two laboratories measured the diameter as the largest width of the coil, perpendicular to the first laboratory's measurement.

temperature tolerance such as ±3 °C should not prove overly burdensome for testing, stating that ASTM food service standards typically have a ±5 degrees Fahrenheit (''°F'') tolerance on ambient temperature. (*Id.*)

The CA IOUs commented that there is no requirement to maintain the ambient temperature close to the ''target'' value of 25 °C. (CA IOUs, No. 14 at p. 7) The CA IOUs suggested that DOE include an additional requirement that the average ambient temperature throughout the test remain within 25 ± 2 °C to provide consistency with the target temperature and to improve repeatability and reproducibility. (*Id.*) The CA IOUs commented that this specification would be in addition to the 25 ± 5 °C maximum and minimum ambient temperature requirements. (*Id.*)

AHAM agreed with DOE's proposal to maintain an ambient room air temperature of 25 ± 5 °C with a target temperature of 25 °C. AHAM stated that it is consistent with the U.S. safety standard for electric cooking tops, UL 858, and that this provision would reduce test burden and allow manufacturers to use existing laboratories for testing to the DOE test procedure. (AHAM, No. 12 at p. 12)

DOE's 2021 Round Robin testing was conducted in accordance with the ambient room air temperature specification of 25 ± 5 °C, as proposed in the November 2021 NOPR. As discussed, it produced repeatable and reproducible results. DOE further notes that testing for the 2021 Round Robin was conducted in facilities that also perform safety testing requiring ambient room air temperatures of 25 ± 5 °C, such as the UL 858 standard. Reducing the allowable range for the ambient room air temperature or adding a secondary tolerance to the average ambient room air temperature would add undue burden to the cooking top test procedure depending on the laboratory's equipment. Based on the foregoing discussion, DOE determines that an ambient room temperature specification of 25 ± 5 °C provides repeatable and reproducible results without being unduly burdensome.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to specify an ambient room temperature of 25 ± 5 °C in new appendix I1.

b. Product Starting Temperature

Section 5.5 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies that the conventional cooking top unit under test must be at the laboratory's ambient temperature at the beginning of each test. To assist in reducing the temperature from a prior test, forced cooling may be used. This provision ensures a repeatable starting temperature of the cooking top before testing. If a cooking top is warmer or colder than the ambient temperature, it would consume a different amount of energy during testing than one that is at the ambient temperature. Section 5.5 of both IEC 60350–2:2017 and IEC 60350–2:2021, however, does not specify how to measure the temperature of the product before each test.

In the November 2021 NOPR, DOE proposed to require that the product temperature must be stable, DOE also proposed to define that as ''a temperature that does not vary by more than 1 °C over a 5-minute period.'' 86 FR 60974, 60984. DOE also proposed to bar using forced cooling during the period of time used to assess temperature stability. *Id.*

DOE further proposed to specify where to measure the temperature of the product. *Id.* Before any active mode testing, the product temperature would be measured at the center of the cooking zone under test. Before the standby mode and off mode power test,[49] the product temperature would be measured as the average of the temperature measured at the center of each cooking zone. *Id.*

DOE requested comments on its proposal to require that the product temperature be stable, its proposed definition of a stable temperature, and its proposed methods for measuring the product temperature for active mode testing as well as standby mode and off mode power testing. *Id.*

The CA IOUs commented that specifying the initial starting temperature of the cooking zone is a key change that would increase repeatability of the test procedure. (CA IOUs, No. 14 at pp. 1–2)

The Joint Commenters supported DOE's proposal to require that the product temperature not vary by more than 1 °C over a 5-minute period. (Joint Commenters, No. 11 at p. 2)

For the reasons discussed, DOE finalizes its proposal to require that the product temperature be stable, its proposed definition of a stable temperature, and its proposed methods for measuring the product temperature for active mode testing as well as standby mode and off mode power testing.

c. Initial Water Temperature

Section 7.5.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies an initial water temperature of 15 ± 0.5 °C, and that the test vessel must not be stored in a refrigerator to avoid the rims getting ''too cold.'' As part of conversations within the Task Force in which DOE has participated, manufacturers expressed concerns regarding the test burden of maintaining a supply of water for test loads that is colder than the ambient temperature, especially when the test vessels cannot be placed in a refrigerator before testing. 86 FR 60974, 60984.

As discussed, DOE is specifying an ambient room temperature of 25 ± 5 °C. In the November 2021 NOPR, DOE stated that it expects that using an initial nominal water temperature of 25 °C, rather than the IEC-specified 15 °C, would not impact the repeatability and reproducibility of the test procedure. *Id.* Furthermore, DOE stated that it expects that an initial nominal water temperature of 25 °C may more accurately represent an average temperature of food or water loads with which consumers would fill their cookware before starting to cook. *Id.* DOE surmised that consumers would be expected to fill cookware not only with refrigerated foods or water from the cold water supply (*i.e.,* food and water loads at 15 °C or lower), but also with water from the hot water supply and food items at room temperature (*i.e.,* food and water loads at 25 °C or higher). *Id.*

DOE also tentatively determined in the November 2021 NOPR that, although a different initial nominal water temperature would be appropriate, it is critical to maintain the tolerance of ± 0.5 °C on the initial water temperature as specified by IEC 60350–2:2017 so that the energy consumption during the initial heat-up phase to 90 °C is repeatable and reproducible. *Id.*

In summary, in the November 2021 NOPR, DOE proposed to specify in new appendix I1 that the water must have an initial temperature of 25 ± 0.5 °C. *Id.* DOE requested comment on this proposal. *Id.*

The CA IOUs and Joint Comments supported the proposed initial water temperature specifications to minimize variability when testing. (CA IOUs, No. 14 at pp. 1–2; Joint Commenters, No. 11 at p. 2)

AHAM commented that it tentatively believes that the proposed initial water temperature of 25 ± 0.5 °C tolerance is too small and creates excessive test burden. (AHAM, No. 12 at p. 12) AHAM is collecting data on potentially expanding the water temperature tolerance to ±1 °C, and stated that DOE should consider its results before publishing a final rule. (*Id.*) AHAM asserted that it is not feasible for a tester

[49] See section III.I of this document for discussion of the standby mode and off mode power test.

to maintain the proposed tolerance, as water temperature can rise above the tolerance between the time when the water is brought to the appliance and when the test is started. (*Id.*)

While DOE has not yet received any data from AHAM on this issue, DOE encourages AHAM to send any data when it becomes available. DOE notes that the 2021 Round Robin, which DOE has concluded resulted in repeatable and reproducible results, used a ±0.5 °C tolerance on the initial water temperature, as proposed in the November 2021 NOPR. DOE is not aware of any of the test laboratories that participated in the 2021 Round Robin having had any difficulty maintaining the ± 0.5 °C tolerance on the initial water temperature. In DOE's experience, the alignment of the nominal ambient temperature and of the nominal initial water temperature at 25 °C, has reduced the burden associated with the ±0.5 °C tolerance on the initial water temperature, as compared to the specification in both IEC 60350–2:2017 and IEC 60350–2:2021. For example, in DOE's experience, if the ambient temperature is maintained at the nominal value of 25 °C and the test vessel is kept in the test room and not placed on a cooking zone that is turned on, the water in the test vessel will remain within the required 25 ± 0.5 °C for 10–30 minutes. For these reasons, DOE determines that maintaining a tolerance of ±0.5 °C on the initial water temperature is not unduly burdensome.

Furthermore, DOE confirms its tentative determination from the November 2021 NOPR that it is critical to maintain the tolerance of ± 0.5 °C on the initial water temperature as specified by IEC 60350–2:2017 so that the energy consumption during the initial heat-up phase to 90 °C is repeatable and reproducible. DOE also confirms its tentative determination from the November 2021 NOPR that it would not be feasible to normalize the measured energy consumption to reflect different starting water temperatures due to the non-linearity of the water temperature curve during the initial portion of the test. A wider initial water temperature tolerance of ±1 °C, as suggested by AHAM, would reduce the repeatability and reproducibility of the test procedure and would seemingly contradict AHAM's comment that DOE's efforts to reduce variation have not reduced variation enough for certain parts of the test procedure (see section III.C of this document).

For the reasons discussed, DOE finalizes its proposal from the November 2021 NOPR to specify an initial water temperature of 25 ± 0.5 °C.

3. Determination of the Simmering Setting

IEC 60350–2:2021 adds a clause to Section 7.5.4.1 of IEC 60350–2:2017 stating that if the smoothened water temperature is below 90 °C during the simmering period, the energy consumption measurement shall be repeated with an increased power setting. The new clause also adds that if the smoothened water temperature is above 91 °C during the simmering period, the test cycle is repeated using the next lower power setting and checked to ensure that the lowest possible power setting that remains above 90 °C is identified for the Energy Test Cycle. In the November 2021 NOPR, DOE stated that it infers from this new clause that if the smoothened water temperature does not drop below 90 °C or rise above 91 °C during the simmering period, no additional testing is needed. 86 FR 60974, 60985. This new clause provides clarity as to what setting is ''as close to 90 °C as possible,'' as required in Section 7.5.2.2 of IEC 60350–2:2017, and therefore improves the reproducibility of the simmering setting determination.

In the November 2021 NOPR, DOE proposed two power setting definitions. First, the ''maximum-below-threshold power setting'' would be ''the power setting on a conventional cooking top that is the highest power setting that results in smoothened water temperature data that does not meet the evaluation criteria specified in Section 7.5.4.1 of IEC 60350–2:2017.'' Second, the ''minimum-above-threshold power setting'' would be ''the power setting on a conventional cooking top that is the lowest power setting that results in smoothened water temperature data that meet the evaluation criteria specified in Section 7.5.4.1 of IEC 60350–2:2017. This power setting is also referred to as the simmering setting.'' *Id.*

DOE also proposed to include a flow chart (see Figure III.1) in new appendix I1 that would require identifying the maximum-below-threshold power setting and the minimum-above-threshold power setting (or the simmering setting) from any valid [50] simmering test conducted according to Section 7.5.2 of IEC 60350–2:2017, as follows:

(1) If the smoothened temperature does not exceed 91 °C or drop below 90 °C at any time in the 20-minute period following t_{90},[51] the power setting under test is considered to be the simmering setting, and no further evaluation or testing is required. The test is considered the Energy Test Cycle.

(2) If the smoothened temperature exceeds 91 °C and does not drop below 90 °C at any time in the 20-minute period following t_{90}, the power setting under test is considered to be above the threshold power setting. The simmering test is repeated using the next lower power setting, after allowing the product temperature to return to ambient conditions, until two consecutive power settings have been determined to be above the threshold power setting and below the threshold power setting, respectively. These power settings are considered to be the minimum-above-threshold power setting and the maximum-below-threshold power setting, respectively. The energy consumption representative of an Energy Test Cycle is calculated based on an interpolation of the energy use of both of these cycles, as discussed in section III.E.4 of this document.

(3) If the smoothened temperature drops below 90 °C at any time in the 20-minute period following t_{90}, the power setting under test is considered to be below the threshold power setting. The simmering test is repeated using the next higher power setting, after allowing the product temperature to return to ambient conditions, until two consecutive power settings have been determined to be above the threshold power setting and below the threshold power setting, respectively. These power settings are considered to be the minimum-above-threshold power setting and the maximum-below-threshold power setting, respectively. The energy consumption representative of an Energy Test Cycle is calculated based on an interpolation of the energy use of both of these cycles, as discussed in section III.E.4 of this document. 86 FR 60974, 60985–60986.

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[50] DOE defines a valid simmering test as one for which the test conditions in section 2 of appendix I1 are met and the measured turndown temperature, Tc, is within −0.5 °C and +1 °C of the target turndown temperature. 86 FR 60974, 60985. See section III.G.5 of this document for definitions of turndown temperature and target turndown temperature.

[51] In the November 2021 NOPR, DOE defined t_{90} in this context as the start of the simmering period and as the time at which the smoothened water temperature first meets or exceeds 90 °C. Id. at 86 FR 60986.

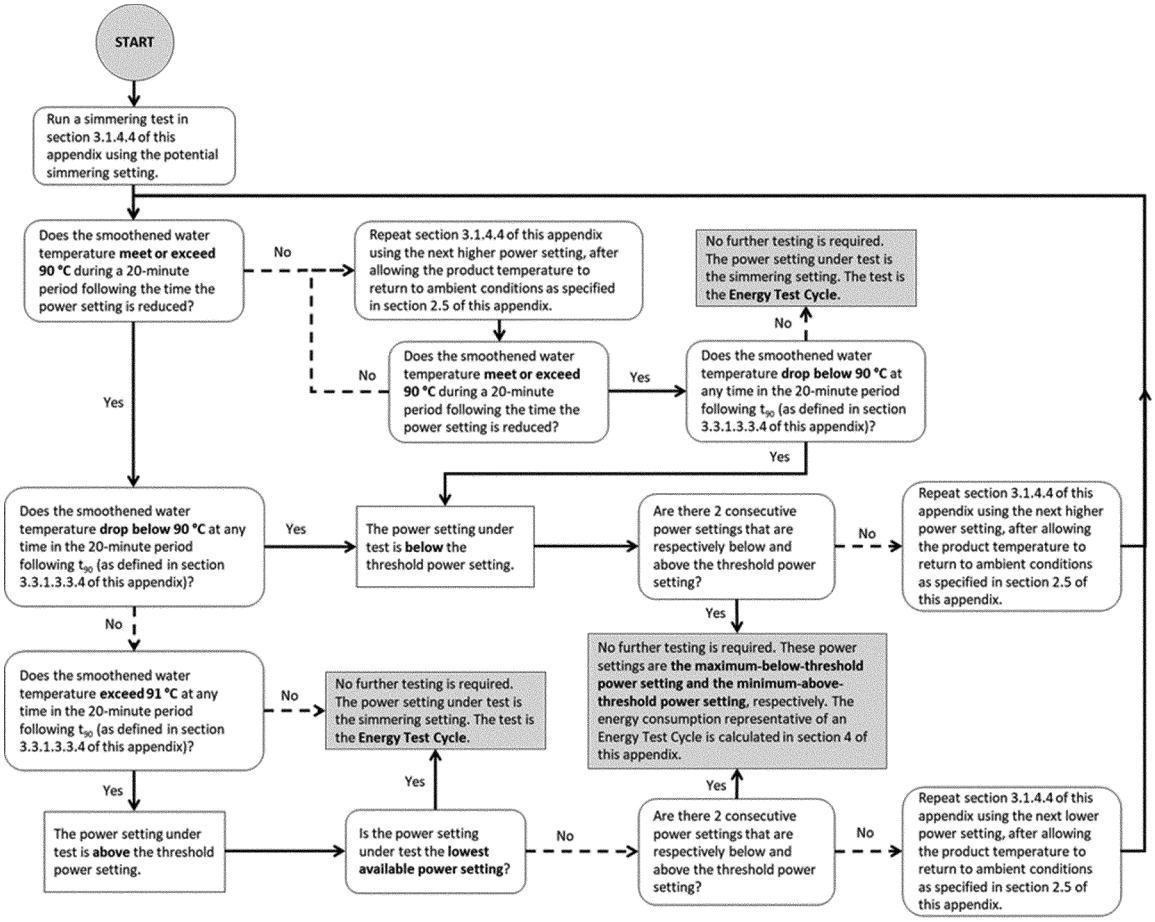

Figure III.1 Flow Chart Proposed in the November 2021 NOPR on Evaluating the Simmering Test

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DOE requested comment on its proposed definitions of the minimum-above-threshold power setting and the maximum-below-threshold power setting, and on its proposed methodology for determining the simmering setting. *Id.* at 86 FR 60986.

NYSERDA supported the proposal to clarify which setting is as close to 90 °C as possible for the simmering period to ensure repeatability and reproducibility. (NYSERDA, No. 10 at p. 2)

The CA IOUs appreciated the flow chart in Figure 3.1.4.5 of the November 2021 NOPR that specifies the simmering test process. (CA IOUs, No. 14 at p. 8)

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed definitions of the minimum-above-threshold power setting and maximum-below-threshold power setting.[52] Within these finalized definitions, DOE references IEC 60350–2:2021 rather than IEC 60350–2:2017, noting that the definitions are the same in each version. DOE also finalizes, consistent with the November 2021 NOPR, its proposed methodology for determining the simmering setting.

To provide additional clarity to the test procedure, in this final rule DOE is moving the definitions of certain terms from section 3 of appendix I1 (as proposed in the November 2021 NOPR) to section 1 of appendix I1. These terms include: the turndown temperature (Tc), the target turndown temperature (Tc_{target}), the simmering period, and the time t_{90} (the start of the simmering period).[53] In appendix I1, DOE is defining the time t_{90} as ''the first instant during the simmering test for each cooking zone where the smoothened water temperature is greater than or equal to 90 °C,'' consistent with the definition in section 3.3.1.3.3.4, as proposed in the November 2021 NOPR. In appendix I1, DOE is also defining the simmering period for each cooking zone as ''the 20-minute period during the simmering test starting at time t_{90},'' consistent with the definition in section 3.3.1.3.3.5, as proposed in the November 2021 NOPR. DOE is also simplifying the language of sections 3.1.4.5, 3.3.1.3.3, 3.3.1.3.3.3, 3.3.1.3.3.4, and 3.3.1.3.3.5 of appendix I1, to reflect the inclusion of these definitions in section 1 of appendix I1, by removing redundant phrases.

DOE also finalizes the use of a flow chart in Figure 3.1.4.5 of appendix I1 that describes how to evaluate the simmering setting, similar to the one proposed in the November 2021 NOPR. The flow chart in Figure 3.1.4.5 of appendix I1 in this final rule uses updated formatting to standardize the shape of the boxes, to provide additional arrows where clarity on the sequence of actions was needed, and to replace the gray background of certain text boxes with a bolded border to increase legibility. The new flow chart

[52] In the finalized definition of maximum-below-power threshold power setting, the phrase ''data that does not meet'' is changed to ''data that do not meet'' to mirror the phrasing used in the definition of minimum-above-threshold power setting.

[53] See section III.G.5 of this document for the definitions of the turndown temperature (T_c) and the target turndown temperature (Tc_{target}).

in Figure 3.1.4.5 of appendix I1 also uses streamlined language to reflect the new definition of simmering period and of turndown temperature, and to use more direct questions. For example, the text ''Does the smoothened water temperature drop below 90 °C at any time in the 20-minute period following t_{90} (as defined in section 3.3.1.3.3.4 of this appendix)?'' is replaced with simpler text that conveys the same question using the wording ''Is the smoothened water temperature ≤ 90 °C at any time during the simmering period?''

4. Normalizing Per-Cycle Energy Use for the Final Water Temperature

As discussed in section III.E.3 of this document, the test conduct can conclude with either one or two cycles. A single Energy Test Cycle in which the smoothened water temperature during the simmering period remains between 90 °C and 91 °C is one possibility. Otherwise, a pair of cycles designated as the minimum-above-threshold cycle and the maximum-below-threshold cycle is identified. In the minimum-above-threshold cycle, as defined above, the smoothened water temperature remains at or above 90 °C for the entire 20-minute simmering period, and the smoothened water temperature exceeds 91 °C for at least one second of the simmering period. Conversely, in the maximum-below-threshold cycle, as defined above, the smoothened water temperature does not remain at or above 90 °C during the entire 20-minute simmering period, and the smoothened water temperature drops below 90 °C for at least one second of the simmering period. In both IEC 60350–2:2017 and IEC 60350–2:2021, the energy use of a cooking zone is calculated based on such a minimum-above-threshold cycle, regardless of the amount by which the smoothened water temperature exceeds 90 °C during the simmering period.

In conversations as part of the Task Force in which DOE has participated, some manufacturers expressed concerns that a test cycle with a water temperature at the end of the simmering period (*i.e.,* a ''final water temperature'') that is above 91 °C may not be comparable to a test cycle with a final water temperature that is closer to 90 °C. The higher the final temperatures, the greater the risk; there is no limit on how far above 91 °C the final water temperature may be (as long as the setting is the minimum-above-threshold cycle). 86 FR 60974, 60986. In addition, this concern is particularly relevant to cooking tops with a small number of discrete power settings that result in relatively large differences in final water temperature between each setting. *Id.* In addition, for cooking tops with continuous (*i.e.,* infinite) power settings, repeatably identifying the minimum-above-threshold cycle is particularly challenging.[54] *Id.*

To reduce test burden for cooking tops with infinite power settings, and to provide comparable energy use for all cooking tops including those with discrete power settings, in the November 2021 NOPR, DOE proposed to normalize the energy use of the minimum-above-threshold cycle to represent an Energy Test Cycle with a final water temperature of exactly 90 °C. DOE proposed using an interpolation of the energy use of the maximum-below-threshold cycle and the respective final smoothened water temperatures. *Id.* For test cycles for which the smoothened water temperature during the simmering period does not exceed 91 °C, DOE also proposed not to perform this normalization for two reasons. First, IEC 60350–2:2017 does not require the next lowest power setting to be tested under these circumstances. Second, DOE had tentatively determined the extra test burden would not be warranted by the resulting small adjustment to the energy use. *Id.*

In the November 2021 NOPR, DOE further posited that the normalization calculation would not be possible under two scenarios. One scenario is the minimum-above-threshold power setting is the lowest available power setting on the cooking zone under test. A second is the smoothened water temperature during the maximum-below-threshold power setting does not meet or exceed 90 °C during a 20-minute period following the time the power setting is reduced. *Id.* Under either of these circumstances, DOE proposed that the minimum-above-threshold power setting test be the Energy Test Cycle. *Id.*

DOE requested comment on its proposal to normalize the energy use of the tested cycle if the smoothened water temperature exceeds 91 °C during the simmering period, to represent an Energy Test Cycle with a final water temperature of 90 °C. *Id.* DOE specifically requested comment on its proposal to use the smoothened final water temperature to perform this normalization and on whether a different normalization method would be more appropriate. *Id.* DOE also requested comment on its proposal not to require the normalization under any of three circumstances: when the smoothened water temperature remains between 90 °C and 91 °C during the simmering period, when the minimum-above-threshold power setting is the lowest available power setting on the cooking zone under test, or when the smoothened water temperature during the maximum-below-threshold power setting does not meet or exceed 90 °C during a 20-minute period following the time the power setting is reduced. *Id.*

NEEA supported normalizing the calculated energy of the Energy Test Cycle to maintain comparable temperatures. (NEEA, No. 15 at p. 2)

The CA IOUs commented that the normalizing methodology would increase repeatability of the simmering test. (CA IOUs, No. 14 at pp. 1–2) The CA IOUs commented that it appears that one pathway [55] on the flow chart in proposed Figure 3.1.4.5 does not align with the requirement for a simmering test to maintain a temperature between 90 and 91 °C throughout the simmering test, or, if that is not possible, for the two dial/knob positions that bound [56] this temperature condition to be tested. (CA IOUs, No. 14 at p. 8) The CA IOUs recommended that the flow chart be fixed to match the verbiage within the test methodology. (*Id.*)

In response to the CA IOUs' concern, DOE confirms that the flowchart pathway highlighted by the CA IOUs correctly reflects the intent of the test procedure as proposed in the November 2021 NOPR and as finalized in this final rule. In performing the complete test procedure, there are three circumstances which will cause the test to conclude with only a single Energy Test Cycle, as opposed to a pair of cycles designated as the minimum-above-threshold cycle and the maximum-below-threshold cycle. First, if the smoothened water temperature does not drop below 90 °C or rise above 91 °C during the simmering period, then no normalization is required. Second, if the lowest power setting available on the cooking zone under test is determined to be the minimum-above-threshold power setting, then no lower setting is available to be considered the maximum-below-threshold power setting. Third, if the maximum-below-threshold power setting is unable to achieve a smoothened water temperature of 90 °C (*i.e.,* does not have

[54] See section III.G.3 of this document for further discussion of the methodology for cooking tops with infinite power settings.

[55] The pathway highlighted visually by the CA IOUs as part of this comment is the pathway wherein the smoothened water temperature during the maximum-below-threshold power setting does not meet or exceed 90 °C during a 20-minute period following the time the power setting is reduced.

[56] The CA IOUs' comment used the word ''bind.'' DOE understands the CA IOUs' comment to have meant to use the word ''bound'' instead of ''bind.''

a definable simmer period), then no normalization can be performed and the Energy Test Cycle consists only of the minimum-above-threshold power setting. The pathway highlighted by the CA IOUs reflects the second pathway.

In summary, DOE finalizes its November 2021 proposals related to normalizing the energy use of the tested cycle. First, if the smoothened water temperature exceeds 91 °C during the simmering period, the tested cycle's energy consumption is normalized to represent an Energy Test Cycle with a final water temperature of 90 °C. Second, testers must use the smoothened final water temperature to perform this normalization. Third, under any of the following three conditions, normalization is not required: (A) the smoothened water temperature remains between 90 °C and 91 °C during the simmering period, (B) the minimum-above-threshold power setting is the lowest available power setting on the cooking zone under test, or (C) the smoothened water temperature during the maximum-below-threshold power setting does not meet or exceed 90 °C.

In this final rule, DOE also clarifies the language in the flow chart in Figure 3.1.4.5 of new appendix I1 to address the situation in which tests occur in a different order. If the first simmering test is conducted with a power setting above the threshold power setting and the second simmering test is one in which the smoothened water temperature does not equal or exceed 90 °C during the simmering phase, it is not necessary to perform the first test again. Instead, a tester evaluates the subsequent flow chart questions using the previously conducted test cycle.

DOE further updates the flow chart language to align the language in all three boxes that state that no further testing is necessary. This will clarify the next steps (*i.e.,* calculations) to perform after testing is complete. For flow chart paths ending with a determination that the test is the Energy Test Cycle, the last sentence of the text box is updated to read ''the test is the Energy Test Cycle, for use in section 4 of this appendix.'' For flow chart paths ending with a determination of a maximum-below-threshold power setting and a minimum-above-threshold power setting, the last sentence of the text box is updated to read ''these power settings are the maximum-below-threshold power setting and the minimum-above-threshold power setting, respectively, for use in section 4 of this appendix.'' DOE has removed all mention of normalization from the flow chart itself, and instead addresses normalization only within section 4 of appendix I1 (''*Calculation of Derived Results from Test Measurements*'').

Finally, since publishing the November 2021 NOPR, DOE is aware that the Task Force has identified a means for reducing test burden when conducting a test cycle on a power setting for which the water temperature does not reach 90 °C. In the September 2021 NOPR, DOE proposed that the determination of whether the smoothened water temperature meets or exceeds 90 °C would be made after a 20-minute time period following the time the power setting is reduced (*i.e.,* ''turndown''). Two of the question boxes in the proposed flowchart in Figure 3.1.4.5 of appendix I1 reflect this. As considered by the Task Force, and consistent with DOE's internal testing experience, a 10-minute period following turndown would be sufficient to confirm test settings that will not reach 90 °C. On such settings, the temperature continues to rise only for a few minutes following turndown, after which the temperature either stabilizes or starts to decrease. On such settings, if the smoothened water temperature has not reached 90 °C by the time it stabilizes or starts to decrease (which occurs a few minutes after turndown), the cycle will not meet or exceed 90 °C. DOE understands that for this reason, the Task Force has updated AHAM's draft test procedure to require only a 10-minute period to determine whether a simmering test meets or exceeds 90 °C following turndown. DOE's testing experience confirms that a 10-minute period is more than sufficient to determine whether the water temperature will meet or exceed 90 °C following turndown. Since this change would reduce test burden while maintaining the same end result of the test, DOE incorporates this change into this final rule, as reflected in updated langue to the flowchart in Figure 3.1.4.5.

F. Extension of Methodology to Gas Cooking Tops

DOE implemented a methodology for testing gas cooking tops in the December 2016 Final Rule, which was based on test provisions in the European Standard EN 30–2–1:1998, ''Domestic cooking appliances burning gas—Part 2–1: Rational use of energy—General'' (''EN 30–2–1'') and EN 60350–2:2013 (extended to testing gas cooking tops). 81 FR 91418, 91422. In the November 2021 NOPR, DOE proposed a test procedure for testing gas cooking tops based on EN 30–2–1 and IEC 60350–2:2017 (extended to testing gas cooking tops), but with additional provisions to clarify testing requirements and improve the reproducibility of test results for gas cooking tops. 86 FR 60974, 60987. In the November 2021 NOPR, DOE stated that round robin testing of gas cooking tops suggests that a test procedure based on IEC 60350–2:2017 and EN 30–2–1, with modification as proposed in the November 2021 NOPR, would provide test results with acceptable repeatability and reproducibility for gas cooking tops. *Id.*

As discussed, in the December 2021 NODA, DOE presented test data from the 2021 Round Robin showing that the repeatability COV for gas cooking tops testing according to the procedure proposed in the November 2021 NOPR was under 2 percent, and the reproducibility COV for gas cooking tops was largely under 4 percent, with a maximum of 5.3 percent. 86 FR 71406, 71407–71408.

Samsung generally supported unifying the cooking top test procedure as much as possible across fuel types, including both gas and electric, to allow comparison of efficiency across the fuel types. (Samsung, No. 16 at p. 2) Samsung suggested that due to the higher COVs measured for gas cooking tops than for electric cooking tops, DOE should establish a wider certification and compliance tolerance for gas cooking tops than electric cooking tops when establishing energy conservation standards. (Samsung, No. 16 at p. 3) Samsung commented that DOE should alternatively continue to improve on the gas test procedure and move forward in finalizing the proposed test procedure for electric cooking tops. (*Id.*) Samsung stated that a finalized test procedure for electric cooking tops could help advance ENERGY STAR recognition of induction cooking tops in the near future, which could lead to significant potential decarbonization and electrification through induction cooking. (*Id.*)

AHAM asserted that manufacturers do not believe it is appropriate to use the same test procedure for gas and electric cooking tops, stating that the technologies and components are different between the two product types and that the use of the same test method is unlikely to reduce variation. (AHAM, No. 12 at p. 17) AHAM stated that it cannot comment on whether or not DOE's gas cooking top test results are representative of factory shipments and sales. (*Id.*) AHAM noted that different constructions will yield a variety of different results, especially considering different burner ratings and thicknesses of the grate. (AHAM, No. 12 at p. 9)

In response to Samsung's comment, in lieu of establishing certification

tolerances, DOE regulations instead specify methods for statistically evaluating a sample plan to ensure that products meet the relevant standard. Any represented value of a basic model for which consumers would favor lower values (such as annual energy use) must be greater than or equal to the higher of the mean of the sample or the upper 97.5 percent confidence limit of the true mean divided by 1.05 (see section III.L.1 of this document).

In response to AHAM's comments, DOE has acknowledged the need to include unique provisions in the test procedure to account for whether the unit being tested is a gas or electric cooking top. Notably, DOE has specified a procedure for adjusting the burner heat input rate for gas cooking tops, as discussed in section III.F.4 of this document. As illustrated by the 2021 Round Robin test results, these specifications have resulted in a cooking top test procedure that has significantly reduced variability as compared to the test procedure finalized in the December 2016 Final Rule. DOE also notes that units used in the round robin testing were not intended to be reflective of any particular shipment or sales distribution except to the extent that a broad range of manufacturers were represented. DOE will address the market distribution of cooking top efficiencies as part of its ongoing energy conservation standards analysis.

1. Gas Test Conditions

In the November 2021 NOPR, DOE proposed that the supply pressure immediately ahead of all controls of the gas cooking top under test must be between 7 and 10 inches of water column for testing with natural gas, and between 11 and 13 inches of water column for testing with propane. 86 FR 60974, 60987. DOE further proposed that the higher heating value of natural gas be approximately 1,025 Btu per standard cubic foot, and that the higher heating value of propane be approximately 2,500 Btu per standard cubic foot. *Id.* These values are consistent with industry standards, and other DOE test procedures for gas-fired appliances.

DOE also proposed to define a standard cubic foot of gas as ''the quantity of gas that occupies 1 cubic foot when saturated with water vapor at a temperature of 60 °F and a pressure of 14.73 pounds per square inch (101.6 kPa).'' *Id.* Standard cubic feet are used to measure the energy use of a gas appliance in a repeatable manner by correcting for potential variation in the gas line conditions.

DOE requested comment on its proposed test conditions for gas cooking tops, and its proposed definition of a standard cubic foot of gas. *Id.*

AHAM agreed with the proposed natural gas and propane heating value definitions. (AHAM, No. 12 at p. 12)

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed test conditions for gas cooking tops, and its proposed definition of a standard cubic foot of gas.

2. Gas Supply Instrumentation

a. Gas Meter

In the November 2021 NOPR, DOE proposed to specify in new appendix I1 a gas meter for testing gas cooking tops. The proposal was identical to the provision in the version of appendix I as finalized in the December 2016 Final Rule. That provision read as follows: the gas meter used for measuring gas consumption must have a resolution of 0.01 cubic foot or less and a maximum error no greater than 1 percent of the measured valued for any demand greater than 2.2 cubic feet per hour. 86 FR 60974, 60987.

DOE requested comment on its proposed instrumentation specifications for gas cooking tops, including the gas meter, and any cost burden for manufacturers who may not already have the required instrumentation. *Id.*

DOE did not receive any comments regarding the proposed specifications for the gas meter used in new appendix I1.

For the reasons presented in the November 2021 NOPR, DOE finalizes its proposed specifications for the gas meter used in new appendix I1.

b. Correction Factor

In the November 2021 NOPR, DOE proposed to include in section 4.1.1.2.1 of new appendix I1 the formula for the correction factor to standard temperature and pressure conditions. This was a change from the version of appendix I as finalized in the December 2016 Final Rule, which referenced the U.S. Bureau of Standards Circular C417, 1938, (''C417''). 86 FR 60974, 60987. DOE stated in the November 2021 NOPR that by providing this explicit formula, it expects to reduce the potential for confusion or miscalculations. *Id.*

Measuring the gas temperature and line pressure [57] are required to calculate the correction factor to standard temperature and pressure conditions. In the November 2021 NOPR, DOE proposed to specify the instrumentation to do so. *Id.* DOE proposed to require that the instrument for measuring the gas line temperature have a maximum error no greater than ±2 °F over the operating range and that the instrument for measuring the gas line pressure have a maximum error no greater than 0.1 inches of water column. *Id.* These requirements are consistent with the gas temperature and line pressure requirements from the test procedures at 10 CFR part 430, subpart B, appendices N and E, for gas-fired furnaces and for gas-fired water heaters, respectively.

DOE requested comment on its proposed instrumentation specifications for gas cooking tops, including for measuring gas temperature and pressure, and any cost burden for manufacturers who may not already have the required instrumentation. *Id.*

UL observed that the accuracy of the gas line pressure meter is specified in the proposed test procedure but that the accuracy of the barometric pressure reading is not specified. (UL, No. 17 at p. 2) UL commented that the barometric pressure reading is not necessary if the gas pressure is measured as absolute pressure. (*Id.*) UL recommended that DOE specify an accuracy for the sum of the barometric pressure and gas pressure measurements and for the barometric pressure measurement. (*Id.*) UL commented that if an accuracy requirement is specified only for the barometric pressure, then DOE should provide guidance for how to combine the two accuracies. (*Id.*)

UL also commented that any pressure measurements that reference a height of liquid should specify the temperature of the liquid, or whether it is ''conventional.'' (UL, No. 17 at pp. 2–3) UL commented that the National Institute of Standards and Technology (''NIST'') provides three possible conversion factors when working with inches of mercury or inches of water, depending on the condition of the liquid. (UL, No. 17 at p. 2) UL commented that the value of P_{base}, the standard sea level air pressure, specified in section 4.1.1.2.1 of proposed appendix I1 (408.13 inches of water) is different than in the gas calorimeter tables in C417 and does not seem to match any typical standard pressure conditions. (*Id.*) UL commented that C417 specifies a pressure of 30 inches of mercury at a temperature of 32 °F, which UL converted according to NIST conversion factors into 101,591.4 Pascals or 407.852 inches of water (using the ''conventional liquid'' conversion factor). (UL, No. 17 at pp. 2–3) UL recommended that the value for P_{base} be updated to match the value

[57] If line pressure is measured as gauge pressure, the absolute pressure is the sum of that value and the barometric pressure.

derived using C417 and that the pressure be specified in units that do not involve the height of a fluid to avoid confusion. (UL, No. 17 at p. 3)

In response to UL's comment that the accuracy of the barometric pressure reading is not specified in the November 2021 NOPR, DOE notes that the 2021 Round Robin produced repeatable test results even though the barometric pressure reading accuracy was not specified. DOE has determined that the laboratories that conducted the 2021 Round Robin used barometric pressure measuring devices with accuracies ranging from 0.1 to 4 millibars. DOE has observed that typical accuracies for barometric pressure reading devices currently on the market are less than 8 millibars. In this final rule, DOE is not specifying an accuracy for the barometric pressure reading in appendix I1, noting that it is unlikely that an instrument used by a test laboratory to measure barometric pressure would produce significantly more variability than was observed in the 2021 Round Robin.

For the reasons discussed, DOE finalizes its proposed gas pressure and temperature specifications for gas cooking tops.

In response to UL's comments regarding the gas correction factor formula, DOE is updating the units of measurement specified in the formula for the correction factor to standard temperature and pressure conditions used in section 4.1.1.2.1 of new appendix I1 to be more representative of the units of measurement used by test laboratories. These changes do not affect any of the resulting calculations. Specifically, DOE notes that C417 specifies a P_{base} value of 30 inches of mercury at a temperature of 32 °F, which is equal to 101,591.4 Pascals,[58] or 14.73 pounds per square inch (''psi'').[59] In the November 2021 NOPR, DOE proposed pressure values in the correction factor formula in inches of water column, which is the unit of measurement most commonly used by industry for measuring gas line pressure. By contrast, in DOE's experience, to measure barometric pressure, psi is a more commonly used unit. In this final rule, DOE updates the specified units for P_{base} and P_{atm} used in the correction factor formula in section 4.1.1.2.1 of appendix I1 to be recorded in psi, and maintains gas line pressure to be measured in inches of water column, as proposed in the November 2021 NOPR. DOE is also including a corresponding conversion factor of 0.0361[60] in appendix I1 to convert P_{gas} from inches of water column to psi.

DOE is also updating the units for gas temperature used in the correction factor formula to be measured in °F or °C, rather than degrees Rankine or Kelvin. To accommodate this change, DOE is including an adder, T_k, to the correction factor formula for converting the gas temperature from °F to Rankine or °C to Kelvin, as applicable.

In summary, DOE believes these changes to the units of measurement better align with the units of measurement most commonly used by test laboratories.

c. Gas Calorimeter

The version of appendix I as finalized in the December 2016 Final Rule required that the heating value be measured with an unspecified instrument with a maximum error of 0.5 percent of the measured value and a resolution of 0.2 percent of the full-scale reading. The heating value was then required to be corrected to standard temperature and pressure. 81 FR 91418, 91440.

In the November 2021 NOPR, DOE proposed to require the use of a standard continuous flow calorimeter to measure the higher heating value of the gas. DOE proposed four requirements: an operating range of 750 to 3,500 Btu per cubic foot, a maximum error no greater than 0.2 percent of the actual heating value of the gas used in the test, an indicator readout maximum error no greater than 0.5 percent of the measured value within the operating range, and a resolution of 0.2 percent of the full-scale reading of the indicator instrument. 86 FR 60974, 60987. These requirements are consistent with the calorimeter requirements from the test procedure at 10 CFR part 430, subpart B, appendix D2, for gas clothes dryers.

As discussed in the November 2021 NOPR, DOE proposed a different approach for determining the heating value because, after discussions with test laboratories and manufacturers, applying the gas correction factor to the heating value does not reflect common practice in the industry. 86 FR 60974, 60987. Instead, DOE proposed to calculate gas energy use as the product of three factors: the measured gas volume consumed (in cubic feet), a correction factor converting measured cubic feet of gas to standard cubic feet of gas as discussed previously, and the heating value of the gas (in Btu per standard cubic foot) in new appendix I1. *Id.* DOE proposed to specify further that the heating value would be the higher heating value on a dry-basis of gas. *Id.* In the November 2021 NOPR, DOE stated that it is DOE's understanding that this is the typical heating value used by the industry and third-party test laboratories. *Id.*

DOE requested comment on its proposed instrumentation specifications for gas cooking tops, including the gas calorimeter, and any cost burden for manufacturers who may not already have the required instrumentation. *Id.*

AHAM commented that it does not oppose DOE's proposal to require the use of a standard continuous flow calorimeter for gas cooking top testing, stating that these devices are standard laboratory equipment. (AHAM, No. 12 at p. 12)

UL commented that the requirements for standard continuous flow calorimeter accuracy separating the meter accuracy (error) from the readout (error) seem to be based on older Cutler Hammer calorimeters and are not applicable to modern equipment or other techniques such as a gas chromatograph or bottled gases. (UL, No. 17 at p. 1) UL commented that it recommends that the regulation combines the meter accuracy with the readout accuracy to have an accuracy requirement for the measurement of heat content. (*Id.*)

UL further commented that the specification for operating range given in section 2.7.2.2 of proposed appendix I1 also seems to be based on older Cutler Hammer calorimeters and stated that, in general, operating ranges are not required for other instruments such as flow meters, volt meters, ammeters, *etc.* (UL, No. 17 at p. 2) UL recommended that section 2.7.2.2 of appendix I1 eliminate the requirement for an operating range, claiming that specifying a broad range tends to reduce accuracy. (*Id.*)

In response to UL's comment regarding the gas meter accuracy, DOE notes that these requirements would not apply if a test laboratory were to use bottled gas to conduct the cooking top test procedure. Modifying the accuracy requirements as suggested by UL could prevent some older testing equipment from being able to be used to perform the DOE test procedure, thus requiring laboratories that use such equipment to purchase newer equipment. DOE has no indications to suggest that such older equipment is any less accurate or any less appropriate for use in the DOE test

[58] 30 inches of mercury at 32 °F x 3,386.38 Pascals per inch of mercury (conversion factor defined by NIST) = 101,591.4 Pascals.

[59] 101,591.4 Pascals ÷ 6,894.757 Pascals per pound per square inch (conversion factor defined by NIST) = 14.73 pounds per square inch.

[60] DOE notes that the conversion from inches of water column to psi, as defined by NIST, is equal to 0.0361, regardless of the temperature of the water defined in the inches of water column unit.

procedure. Thus, requiring the purchase of newer equipment would represent undue test burden. DOE further notes that the requirements as proposed in the November 2021 NOPR do not preclude the use of more modern equipment. In this final rule, DOE finalizes the requirements for the accuracy of the standard continuous flow calorimeter as proposed in the November 2021 NOPR.

In response to UL's comment stating that specifying a broad operating range tends to reduce accuracy, DOE notes that the equipment used for testing must meet the accuracy specifications defined by the test procedure, regardless of whether a broad or narrow operating range is specified (*i.e.,* in combination with specifying an accuracy range, the specification of a broad operating range has no impact on the accuracy of the measured value). DOE recognizes, however, that specifying a particular operating range could prevent certain equipment from being used that may have a different specified operating range but provides an equivalent level of accuracy for the values being measured for the DOE test procedure. As such, specifying an accuracy range could increase test burden (by requiring the purchase of new equipment) without providing any benefit in the form of improved accuracy. For this reason, DOE determines that specifying an operating range for the gas calorimeter could introduce undue test burden. In this final rule, DOE specifies the required accuracy of the standard continuous flow calorimeter without specifying an allowable operating range.

For the reasons discussed, DOE finalizes its proposed instrumentation specifications for gas calorimeters for gas cooking tops, with the elimination of the 750 to 3,500 Btu per cubic foot operating range requirement proposed in the November 2021 NOPR.

3. Test Vessel Selection for Gas Cooking Tops

In applying the test method in IEC 60350–2:2021 to gas cooking tops, DOE must define test vessels that are appropriate for each type of burner. The test vessels specified in Section 5.6.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 are constructed from a 1-mm thick stainless steel sidewall welded to a 5-mm thick circular stainless steel base, with additional heat-resistant sealant applied.

The EN 30–2–1 test method, which is designed for use with gas cooking tops, specifies test vessels that differ in dimensions, material, and construction from those in IEC 60350–2. Further, Table 1 of EN 30–2–1 defines the test vessel selection based on the nominal heat input rate (specified in kilowatts (''kW'') of each burner under test, as shown in Table III.1). These test vessels are fabricated from a single piece of aluminum, with a wall thickness between 1.5 and 1.8 mm.

TABLE III.1—TEST VESSEL SELECTION FOR GAS COOKING TOPS IN EN 30–2–1

Nominal heat input range *(kW)*	Test vessel diameter *(mm)*	Notes
between 1.16 and 1.64 inclusive	220	
between 1.65 and 1.98 inclusive	*240	
between 1.99 and 2.36 inclusive	*260	
between 2.37 and 4.2 inclusive	*260	Adjust the heat input rate of the burner to 2.36 kW ±2%.
greater than 4.2	*300	Adjust the heat input rate of the burner to 4.2 kW ±2%.

*If the indicated diameter is greater than the maximum diameter given in the instructions, conduct the test using the next lower diameter and adjust the heat input rate to the highest heat input of the allowable range for that test vessel size, ±2%.

Because they are not made of a ferromagnetic material (such as stainless steel), the EN 30–2–1 test vessels could not be used for electric-smooth induction cooking tops. To use a consistent set of test vessels for all types of gas and electric cooking tops, DOE proposed in the November 2021 NOPR to specify in new appendix I1 the IEC 60350–2:2017 test vessel to be used for each gas burner,[61] based on heat input rate ranges equivalent to those in Table 1 of EN 30–2–1, although expressed in Btu per hour (''Btu/h''). 86 FR 60974, 60988. The test vessel diameters in EN 30–2–1 do not exactly match those of the test vessels in IEC 60350–2, but DOE selected the closest match possible, as shown in Table III.2. DOE also proposed to adjust the lower limit of one of the burner heat input rate ranges corresponding to the EN 260 mm test vessel (1.99–2.36 kW, equivalent to 6,800–8,050 Btu/h) and to allocate some of its range to the IEC 240 mm vessel for two reasons. First, it would provide more evenly balanced ranges. Second, it would avoid a significant mismatch between the heat input rate and test vessel sizes at the lower end of the heat input range. *Id.* DOE did not propose to include the notes included in EN 30–2–1, which require burners with nominal heat input rates greater than 8,050 Btu/h to be tested at heat input rates lower than their maximum rated value. DOE preliminarily determined these would not be representative of consumer use of such burners. *Id.*

TABLE III.2—TEST VESSEL SELECTION FOR GAS COOKING TOPS PROPOSED IN THE NOVEMBER 2021 NOPR

Nominal gas burner input rate *(Btu/h)*		EN 30–2–1 Test vessel diameter *(mm)*	IEC 60350–2 Test vesel diameter *(mm)*	Water load mass *(g)*
Minimum (>)	Maximum (≤)			
	5,600	220	210	2,050
5,600	8,050	240 and 260	240	2,700
8,050	14,300	260	270	3,420

[61] As described previously, both IEC 60350–2:2017 and IEC 60350–2:2021 specify test vessels in the following diameters: 120 mmm 150 mm, 180 mm, 210 mm, 240 mm, 270 mm, 300 mm, and 330 mm.

TABLE III.2—TEST VESSEL SELECTION FOR GAS COOKING TOPS PROPOSED IN THE NOVEMBER 2021 NOPR—Continued

Nominal gas burner input rate (Btu/h)		EN 30–2–1 Test vessel diameter (mm)	IEC 60350–2 Test vesel diameter (mm)	Water load mass (g)
Minimum (>)	Maximum (≤)			
14,300		300	300	4,240

Similar to electric cooking tops, DOE also proposed in new appendix I1 that if a selected test vessel cannot be centered on the cooking zone due to interference with a structural component of the cooking top, the test vessel with the largest diameter that can be centered on the cooking zone be used.[62] *Id.*

DOE requested comment on its proposal to require the use of IEC test vessels for gas cooking tops and on its proposed method for selecting the test vessel size to use based on the gas burner's heat input rate. *Id.*

The Joint Commenters agreed with the proposed test vessels and test vessel selection method for gas cooking tops. (Joint Commenters, No. 11 at p. 2) The Joint Commenters supported aligning the test methods for gas and electric cooking tops to the extent possible. (*Id.*) The Joint Commenters stated that using a consistent set of test vessels across all cooking tops can provide more accurate comparisons between cooking top models across different product types. (*Id.*)

Samsung supported the use of the same test vessels for both electric and gas cooking tops, stating that minimizing the variety of test vessels required reduces testing burden. (Samsung, No. 16 at p. 2)

The CA IOUs requested that DOE amend the gas and/or electric cooking top test vessel and water load selection criteria to mitigate what they claimed were discrepancies in comparability between cooking tops with different fuel types. (CA IOUs, No. 14 at p. 2) The CA IOUs commented that, while IEC 60350–2 and EN 30–2–1 are both reliable test procedure sources for their respective cooking top fuels, the use of two different sources for developing the test vessel and water load selection criteria may result in significant differences that limit performance comparisons between electric and gas cooking tops. (*Id.*) The CA IOUs commented that IEC 60350–2 and EN 30–2–1 were not developed to be directly comparable to one another, and stated that as such, DOE should make amendments to ensure comparability. (*Id.*) The CA IOUs recommended that to create a more comparable test procedure, the electric and gas cooking tops should have the same granularity of test vessel and water load selection criteria. (*Id.*) They stated that the gas cooking top test vessel selection table includes only half of the eight test vessels in the electric cooking top test vessel selection table. (*Id.*)

According to the CA IOUs, the relationship between input power and water load is not equivalent between cooking top fuel types because of the difference in granularity between electric and gas cooking top test vessel selection criteria in the November 2021 NOPR. (*Id.*) The CA IOUs commented that they have developed a crosswalk between the test vessel selection criteria for electric cooking tops based on cooking zone diameter, and for gas cooking tops based on evaluating the nominal burner input rating, using the cooking zone diameters and associated power ratings of a representative electric range. (CA IOUs, No. 14 at p. 3) The CA IOUs asserted that the resulting analysis shows the inconsistent test vessel and water load granularity between electric and gas. (*Id.*) The CA IOUs stated that by their calculation, the narrowest range defined for a gas cooking top test vessel (5,600 to 8,050 Btu/h, for use with the 240 mm test vessel) corresponds to three different vessel sizes for electric cooking tops within that equivalent range. (*Id.*) The CA IOUs further stated that the rate of change in water load to input power ratios is inconsistent between electric and gas cooking tops. (CA IOUs, No. 14 at p. 4) The CA IOUs commented that it is understandable that an electric heating element and gas burner designed for the same consumer purpose (*e.g.,* primary large or secondary simmering cooking zone) have different power ratings. (*Id.*) They stated that, according to a 2019 study conducted by Frontier Energy, they transfer heat to the pan or pot at different efficiencies dictated by their fuel type.[63] (*Id.*) The CA IOUs asserted that once that inherent difference has been established, the rate of change to the next test vessel selection should be consistent for both electric and gas cooking tops with the change in water load. (*Id.*) However, they noted that as proposed in the November 2021 NOPR, when moving from the 2,700 g water load to the 3,420 g water load, the electric heating element power increases by 13 percent, while the gas burner power increases by 64 percent. (*Id.*)

The CA IOUs claimed that the inconsistencies in the test vessel selection criteria create a test procedure that does not allow for an accurate comparison between gas and electric product performance and thus limits a consumer's ability to accurately compare products. (CA IOUs, No. 14 at p. 5) The CA IOUs requested that DOE align the gas cooking top test vessel and water load selection criteria with the electric cooking top criteria more closely by specifying an equal number of test vessel and water load increments for gas and electric cooking tops. (*Id.*) The CA IOUs also requested that DOE amend the gas and/or electric cooking top test vessel and water load selection criteria rate of changes to more closely align with one another. (*Id.*)

AHAM commented that DOE has not conducted testing to understand the wear and degradation effects from gas units on the IEC cookware, stating that the long-term durability of stainless pots for gas testing is unknown. (AHAM, No. 12 at p. 13) AHAM commented that it is conducting investigative testing to assess the difference in results between IEC and EN test vessels. (*Id.*) AHAM stated that DOE should wait for its test results before proceeding and should include its results in a supplemental

[62] See section III.E.1 of this document for a discussion of the clarifying edits to this provision for electric cooking tops, which is extended to gas cooking tops, requiring that if a test vessel lid cannot be centered on the test vessel due to interference from a structural component, the substitution also occurs.

[63] As described in a 2019 study by Frontier Energy, gas cooking tops ''have the highest thermal losses because the gas flame heats up the air around the pot or pan, which in turn heats up the kitchen'' while electric cooking tops, either ''heat up the pot or pan directly and not the surrounding air'', as is the case with induction cooking, or ''heat the air indirectly'' due to heating of the cooking top itself such as with electric resistance cooking tops. Residential Cooktop Performance and Energy Comparison Study by Frontier Energy. July 2019. *cao-94612.s3.amazonaws.com/documents/Induction-Range-Final-Report-July-2019.pdf.* Last accessed March 31, 2022.

NOPR (''SNOPR'') or NODA as needed. (*Id.*) AHAM commented that it acknowledges the potential to reduce burden associated with using the same pots but stated that the impact of doing so on test results needs to be studied. (*Id.*)

In response to the CA IOUs' comments regarding the differences in granularity of the defined heat input ranges corresponding to each test vessel size for gas and electric cooking tops, DOE notes that gas and electric cooking tops are not directly comparable in terms of the variety of element and burner sizes generally offered on individual models. On a single unit, electric cooking tops generally offer a greater range of heating element sizes and maximum input rates among the different heating elements than gas cooking tops offer in terms of burner input rates.

As discussed in section III.E.1 of this document, gas burners are able to be effectively used with a much wider range of pot sizes than electric heating elements. An electric heating element can only provide effective heat transfer to the area of a pot in direct contact or in line of sight with the element, such that the range of pot diameters that can be effectively used on an electric heating element is limited by the diameter of the heating element. Conversely, gas burners are able to provide effective heat transfer to a wider range of pot sizes (and in particular, pots with a diameter larger than the burner). Thus, the range of pot diameters that can be effectively used on a gas burner is not limited by the diameter of the burner to the same extent that it is for an electric heating element. For these reasons, DOE has determined that it is appropriate that the test procedure specify smaller test vessel increments (*i.e.,* more granularity) for electric cooking tops than for gas cooking tops.

Furthermore, DOE is unaware of any existing electric cooking tops with heating element diameters smaller than 130 mm (5.1 inches) or larger than 310 mm (12.2 inches), which would use the 120 mm and 330 mm test vessels, respectively. Therefore, effectively only six test vessel sizes (as opposed to eight included for consideration) are used for electric cooking tops as compared to the four test vessel sizes used for gas cooking tops.

In response to AHAM's comment on the use of the IEC test vessels for gas cooking top testing, DOE has determined that there is no evidence to suggest that consumers use different cookware for gas and electric cooking tops. Therefore, DOE proposed to use the same cookware for testing gas cooking tops as is used for electric cooking tops. DOE selected the IEC test vessels because they are compatible with all cooking technologies, unlike the EN test vessels.[64] As discussed, DOE has conducted a rigorous round robin testing program over multiple months using the IEC test vessels on both gas and electric cooking tops, and DOE has not encountered any problems with their use during this testing. Further, DOE observed no discernable difference in the condition of the test vessels after electric or gas cooking top testing. See section III.H.3 of this document for further discussion regarding test vessel flatness. DOE has not yet received any data from AHAM on this issue and encourages AHAM to send any data when it becomes available.

For the reasons discussed, DOE finalizes its proposal in the November 2021 NOPR to require the use of IEC test vessels for gas cooking tops, and its proposed method for selecting the test vessel size based on the gas burner's heat input rate.

4. Burner Heat Input Rate Adjustment

In the November 2021 NOPR, DOE recognized that the version of appendix I as finalized in the December 2016 Final Rule did not include requirements related to gas outlet pressure, in particular a tolerance on the regulator outlet pressure or specifications for the nominal heat input rate for burners on gas cooking tops. 86 FR 60974, 60988. From a review of the test results from the 2020 Round Robin, DOE tentatively concluded in the November 2021 NOPR that the lack of such provisions was likely a significant contributor to the greater reproducibility COV values observed for gas cooking tops in relation to those for electric cooking tops. *Id.* To improve test procedure reproducibility, DOE proposed in the November 2021 NOPR to incorporate gas supply pressure and regulator outlet pressure (which affects heat input rate) requirements into new appendix I1, as described further in the following discussion. *Id.*

Industry procedures for gas cooking tops include specifications for the heat input rate. For example, EN 30–2–1 specifies that before testing, each burner is adjusted to within 2 percent of its nominal heat input rate. Section 5.3.5 of the American National Standards Institute (''ANSI'') Standard Z21.1–2016, ''Household cooking gas appliances'' (''ANSI Z21.1'') has a two-step heat input rate requirement. First, individual burners must be adjusted to their Btu rating at normal inlet test pressure. Next, the heat input rate of the burners must be measured after 5 minutes of operation, at which time it must be within ± 5 percent of the nameplate value.

Based on a review of its test data, DOE tentatively determined in the November 2021 NOPR that specifying a tolerance of ± 5 percent from the nominal heat input rate may not produce repeatable and reproducible test results. *Id.* at 86 FR 60989. Therefore, DOE proposed to specify in new appendix I1 that the measured heat input rate be within 2 percent the nominal heat input rate as specified by the manufacturer. *Id.*

In the November 2021 NOPR, DOE proposed that the heat input rate be measured and adjusted for each burner of the cooking top before conducting testing on that burner. *Id.* The measurement would be taken at the maximum heat input rate, with the properly sized test vessel and water load centered above the burner to be measured, starting 5 minutes after ignition. *Id.* If the measured average heat input rate of the burner is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer, no adjustment of the heat input rate would be made for any testing of that burner. *Id.*

DOE also proposed to require adjusting the average heat input rate if the measured average heat input rate of the burner is not within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. *Id.* For gas cooking tops with an adjustable internal pressure regulator, the pressure regulator would be adjusted such that the average heat input rate of the burner under test is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. *Id.* For gas cooking tops with a non-adjustable internal pressure regulator or without an internal pressure regulator, the regulator would be removed or blocked in the open position, and the gas pressure ahead of all controls would be maintained at the nominal manifold pressure specified by the manufacturer. *Id.* These proposed instructions are in accordance with provisions for burner adjustment in Section 5.3.3 of ANSI Z21.1. The gas supply pressure would then be adjusted until the average heat input rate of the burner under test is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. *Id.* In either case, the burner would be adjusted such that the air flow is sufficient to prevent a yellow flame or flame with yellow tips. *Id.*

[64] Because the EN cookware are made of aluminum, they would not be usable on electric cooking tops using induction heating technologies.

Once the heat input rate has been set for a burner, it would not be adjusted during testing of that burner. *Id.*

DOE requested comment on its proposal for adjusting the burner heat input rate to the nominal heat input rate as specified by the manufacturer, and to include a 2-percent tolerance on the heat input rate of each burner on a gas cooking top. *Id.* Below are summaries of comments received.

NYSERDA agreed with including gas supply pressure and regulatory outlet pressure requirements to ensure repeatability and reproducibility. (NYSERDA, No. 10 at p. 2)

The Joint Commenters supported the proposal for adjusting the burner heat input rate for gas cooking tops, the inclusion of specifications for the heat input rate, and the 2-percent tolerance on the heat input rate to ensure reproducibility of test results. (Joint Commenters, No. 11 at p. 3)

NEEA supported the proposed methodology for input rate verification and the proposed 2-percent tolerance on input rate, stating that these proposals align with the methodology of ASTM food service standards and should be rigorous enough to ensure repeatable testing. (NEEA, No. 15 at p. 2)

The CA IOUs supported the proposed input rate and incoming gas pressure specifications to ensure that units tested at different laboratories are tested under comparable conditions. (CA IOUs, No. 14 at p. 2)

AHAM commented that the third-party test laboratory it used for its testing had problems controlling gas pressure and flow, especially on smaller burners rated at 5,000 to 6,000 Btu/h. (AHAM, No. 12 at p. 11) AHAM stated that depending on unit construction, damage could occur from blocking open a built-in gas regulator, internal to the unit, to achieve the required gas tolerance. (*Id.*) AHAM also stated this could generate inaccurate results. (*Id.*)

AHAM asserted that the proposed tolerance of the average heat input rate of the burner under test being within 2 percent of the nominal heat input rate of the burner is too small. (AHAM, No. 12 at p. 13) AHAM stated that it is conducting investigative testing using both a 2-percent and 5-percent tolerance, and that DOE should wait for the results rather than using a calculated assessment of how results change based on burner adjustment. (*Id.*) AHAM recommended that DOE use the 5-percent tolerance if it decides to move forward without test data to support its proposal, stating that a 5-percent tolerance is used in well-established industry standards. (*Id.*) AHAM claimed that DOE's data do not demonstrate that variation in the test itself has been reduced. (*Id.*) AHAM stated that other factors, such as improved test technician understanding of the test, likely contributed to the reduction in variation. (*Id.*) Additionally, AHAM commented that the tighter tolerance on burner heat input rate adds undue burden. AHAM further stated that changing barometric pressure conditions must be considered within a wider tolerance. (*Id.*) AHAM commented that the smaller tolerance window is more problematic for smaller burners (5,000–6,000 Btu/h) than for higher-input-rate burners. (*Id.*)

UL commented that the procedure for gas burner adjustment defines only when to start measuring heat input and not for how long. (UL, No. 17 at p. 2) UL stated that the duration of the input rate measurement should be defined since heat input decreases over time. (*Id.*) UL asserted, for example, that if one laboratory measures heat input for 10 seconds and another measures it over a time period of 2 minutes, the numbers will be different because the heat input is changing while it is being measured. (*Id.*) UL suggested that some laboratories may object to a specific time period and stated that a range may be a good compromise to accommodate different measurement methods. (*Id.*) According to UL, some laboratories may rely on a stopwatch to measure the time of a specified number of rotations of the needle on a wet drum meter, and that the amount of time for those rotations depends on the size of the meter and the rating for the burner. (*Id.*) UL commented that other laboratories may have equipment to measure instantaneous heat input, in which case a time for measurement can align with alternative methods. (*Id.*)

DOE has not yet received any data from AHAM on this issue and encourages AHAM to send any data when it becomes available. AHAM's concern regarding the potential damage to the unit from blocking a built-in regulator in the open position to achieve the required burner heat input rate is not supported by DOE's testing experience. When blocking a gas regulator in the open position, to obtain the required heat input, the test laboratory would use the laboratory regulator on the gas supply line, upstream of the unit, to control the gas supply pressure. This external regulation would reduce the pressure and mitigate any gas flow fluctuations from the supply line that could cause potential damage. DOE also notes that this approach leads to more repeatable and reproducible results.

DOE's 2021 Round Robin test data shows improved repeatability and reproducibility in comparison to the 2020 Round Robin. Specifying a 2-percent tolerance on the burner heat input rate was one of the key differences between the two test programs. All of the data DOE has presented for both the 2020 Round Robin and the 2021 Round Robin was collected by experienced technicians and validated for compliance with the appropriate test method. DOE notes that none of the three test laboratories that participated in gas testing for the 2021 Round Robin reported any difficulty in meeting the 2-percent specification even on smaller burners.

DOE reiterates that the proposed 2-percent tolerance mirrors the tolerance specified in the EN 30–2–1 industry test procedure. DOE further notes that it did not propose any provisions that would require changing barometric conditions. Furthermore, DOE notes that AHAM's request for a 5-percent tolerance on the nominal burner heat input rate would seemingly contradict AHAM's comment that DOE's efforts to reduce variation have not reduced variation enough for certain parts of the test procedure (see section III.C of this document).

DOE disagrees with UL's suggestion to define the duration over which the burner heat input rate should be measured. As suggested by UL, the appropriate length of time over which the burner heat input rate should be measured is based on the type of meter being used and test laboratory best practices will depend on the type of meter being used. DOE testing suggests that the rate of change of the burner heat input rate within a few minutes after 5 minutes of operation is small enough that the average burner heat input rate measurement would not vary significantly for different measurement periods within that time frame. DOE expects that laboratories complete this measurement within a few minutes after the end of the 5-minute operating period, regardless of the type of meter being used. Therefore, DOE is not specifying a period of time over which the average burner heat input rate must be measured.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposal for adjusting the burner heat input rate to the nominal heat input rate as specified by the manufacturer, and to include a 2-percent tolerance on the heat input rate of each burner on a gas cooking top.

For clarity, DOE is removing the word ''average'' from section 3.1.3 of appendix I1 to avoid implying that the measurement must be made over a

specific length of time and, in particular, to accommodate the option to measure instantaneous burner heat input rate after the specified 5 minutes of operation.

5. Target Power Density for Optional Potential Simmering Setting Pre-Selection Test

As discussed in section III.D.2.d of this document, Annex H of IEC 60350–2:2021 specifies a target power density of 0.8 W/cm^2 for the potential simmering setting pre-selection test for electric cooking tops. In the November 2021 NOPR, DOE proposed for gas cooking tops to specify a separate target power density, which would be measured in Btu per hour divided by the area of the cookware bottom in square centimeters (''Btu/h·cm^2''). 86 FR 60974, 60989.

To evaluate possible values for this target power density, in the November 2021 NOPR, DOE investigated test data from five gas cooking tops, each tested three times as part of the 2020 Round Robin,[65] at a single test laboratory. *Id.* The range of power densities measured for test cycles of minimum-above-threshold settings was 3.8–11.6 Btu/h·cm^2. *Id.* at 86 FR 60990. The range of power densities measured for test cycles of maximum-below-threshold settings was 2.6–5.9 Btu/h·cm^2. *Id.* In the November 2021 NOPR, DOE preliminarily estimated that a target power density of 4.0 Btu/h·cm^2 would be appropriate. *Id.* DOE noted that it could consider specifying a different target power density for the potential simmering setting pre-selection test if additional data were to suggest that a different value would be more representative than the proposed value of 4.0 Btu/h·cm^2. *Id.*

In the December 2021 NODA, DOE presented data from the 2021 Round Robin. The additional data DOE collected were on the measured power density of the minimum-above-threshold input setting and the maximum-below-threshold input setting for four gas cooking tops.[66] 86 FR 71406, 71408. The range of power densities measured for test cycles of minimum-above-threshold settings was 3.2–9.5 Btu/h·cm^2. The range of power densities measured for test cycles of maximum-below-threshold settings was 2.5–6.4 Btu/h·cm^2.

In the November 2021 NOPR, DOE requested comment on its proposed target power density for gas cooking tops of 4.0 Btu/h·cm^2. 86 FR 60974, 60990.

DOE did not receive any comments regarding its proposed target power density for gas cooking tops of 4.0 Btu/h·cm^2.

DOE finalizes, consistent with the November 2021 NOPR, its proposed target power density for the optional potential simmering setting pre-selection test for gas cooking tops of 4.0 Btu/h·cm^2.

6. Product Temperature Measurement for Gas Cooking Tops

As discussed in section III.E.2.b of this document, DOE is specifying in new appendix I1 that the temperature of the product must be measured at the center of the cooking zone under test before any active mode testing. In the November 2021 NOPR, DOE proposed to specify that this requirement would also apply to gas burner adjustments described in section 3.1.3 of new appendix I1. 86 FR 60974, 60990. DOE further proposed to specify that for a conventional gas cooking top, the product temperature would be measured inside the burner body of the cooking zone under test, after temporarily removing the burner cap. *Id.* Before the standby mode and off mode power test, the product temperature would be measured as the average of the temperature measured at the center of each cooking zone. *Id.*

DOE requested comment on its proposal to require measuring a gas cooking top's temperature inside the burner body of the cooking zone under test, after temporarily removing the burner cap. *Id.*

AHAM objected to DOE's proposal to require measuring the product temperature inside the burner body of the cooking zone under test, after temporarily removing the burner cap. (AHAM, No. 12 at p. 13) AHAM gave several reasons: DOE had not presented data to show that burner cap removal is necessary, and this requirement would be impractical, invasive, unnecessary, and not in accordance with common practices for testing gas cooking appliances. AHAM commented that burners have an increased risk of damage if they are tampered with and stated that burner disassembly compromises proper and safe performance and is not appropriate for gas products. (AHAM, No. 12 at pp. 13–14) AHAM urged DOE not to require any appliance disassembly in the test procedure. (AHAM, No. 12 at p. 14)

The CA IOUs suggested that DOE clarify where to measure the product temperature for products without burner caps. (CA IOUs, No. 14 at p. 7)

In response to AHAM's concern regarding the removal of the gas burner cap to measure the product temperature of a gas cooking top, DOE notes that to its knowledge and through its testing experience, removing the burner cap is generally not difficult and does not risk damage to the unit. A test laboratory that participated in the 2021 Round Robin confirmed with DOE that the removal of the gas burner cap is not a complicated or time-consuming requirement. DOE further notes that removing the gas burner cap is a common practice among consumers as part of the regular cleaning process for gas cooking tops, and instructions for doing so are typically included in manufacturer instructions. DOE considered not requiring the removal of the gas burner cap to measure the product temperature but has determined that the method proposed in the November 2021 NOPR is the approach that best confirms whether a cooking top's internal components have returned to ambient conditions. This confirmation is especially important for gas cooking tops because the temperature of the internal components can affect critical dimensions, and thus the amount of gas flow and entrained air. If the cooking top is not properly tested starting at ambient temperature, this factor could lead to unrepeatable results. DOE notes that throughout both the 2020 Round Robin and the 2021 Round Robin, three test laboratories followed the requirement to measure the product temperature inside the burner body of the cooking zone under test, after temporarily removing the burner cap without issue.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to require measuring a gas cooking top's temperature inside the burner body of the cooking zone under test, after temporarily removing the burner cap. In response to the comment from the CA IOUs, DOE clarifies that the burner cap need only be removed if one exists.

[65] This test data was not measured according to the test procedure proposed in the November 2021 NOPR. DOE preliminarily determined that it was still useful to evaluate potential target power densities because a cooking top setting's power density is inherent and does not vary with test procedure protocol. However, due to the lack of burner heat input rate tolerance in the testing, some of these tested values may not accurately reflect the expected power densities when the heat input rate is within 2 percent of the nominal value.

[66] The test data are available in the docket for this rulemaking at: *www.regulations.gov/document/EERE-2021-BT-TP-0023-0004*. Unlike the data presented in the November 2021 NOPR, these test data were measured according to the test procedure proposed in the November 2021 NOPR. However, DOE believes the two data sets present comparable data.

G. Definitions and Clarifications

As part of this final rule, DOE is adding certain definitions and clarifications to new appendix I1 in addition to those already described.

1. Operating Modes

To clarify provisions relating to the various operating modes, in the November 2021 NOPR, DOE proposed to add definitions of ''active mode,'' ''off mode,'' ''standby mode,'' ''inactive mode,'' and ''combined low-power mode'' to new appendix I1. 86 FR 60974, 60990. These definitions are identical to those that had been established in the version of appendix I as finalized in the December 2016 Final Rule.

DOE proposed to define active mode as ''a mode in which the product is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or electric inductive heating.'' *Id.*

DOE proposed to define off mode as ''any mode in which a product is connected to a mains power source and is not providing any active mode or standby function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.'' *Id.*

DOE proposed to define standby mode as ''any mode in which a product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) Facilitation of the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Provision of continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that allows for regularly scheduled tasks and that operates on a continuous basis.'' Id. at 86 FR 60990–60991.

DOE proposed to define inactive mode as ''a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.'' *Id.* at 86 FR 60991.

DOE proposed to define combined low-power mode as ''the aggregate of available modes other than active mode, but including the delay start mode portion of active mode.'' *Id.*

DOE requested comment on its proposed definitions of ''active mode,'' ''off mode,'' ''standby mode,'' ''inactive mode,'' and ''combined low-power mode.'' *Id.*

The CA IOUs commented that DOE's proposal to define both ''standby'' and ''inactive'' mode may cause confusion. (CA IOUs, No. 14 at p. 5) The CA IOUs suggested that DOE remove references to ''inactive'' mode from the test procedure and stated that the standby mode definition would then be used in low-power mode calculations. (*Id.*) The CA IOUs commented that it is their understanding that when DOE originally defined inactive mode as a subset of standby mode in the final rule pertaining to test procedures for clothes dryers and room air conditioners, published on January 6, 2011, it did not intend for the terms ''inactive'' and ''standby'' to be defined as separate modes for a single product, as has been done in the November 2021 NOPR. (CA IOUs, No. 14 at p. 6) The CA IOUs commented that it is their understanding that the inactive mode was intended to be referenced partly in lieu of standby mode, when the statutory standby definition in the Energy Independence and Security Act of 2007 [67] (''EISA 2007'') did not apply. (CA IOUs, No. 14 at pp. 5–6) The CA IOUs recommended that the references to inactive mode be removed from the rulemaking unless DOE has identified a strong rationale for using a standby definition other than that provided by Congress. (CA IOUs, No. 14 at pp. 5–6)

In response to the CA IOUs' concern that DOE's proposal to define both ''standby'' and ''inactive'' mode may cause confusion, DOE notes that inactive mode was defined in the November 2021 NOPR as a subset of standby mode. It was in section 1.14 of the version of appendix I as finalized in the December 2016 Final Rule, on which the definitions used in the November 2021 NOPR were based. 86 FR 60974, 60991. EPCA, as amended by EISA 2007, requires DOE to integrate measures of standby mode and off mode energy consumption in any energy consumption metric, if technically feasible. (See 42 U.S.C. 6295(gg)(2)(A)) Inactive mode is the subset of standby mode measured as part of the energy consumption metric. DOE further notes that this terminology is consistent with other products such as clothes dryers, room air conditioners, and dishwashers. *See* 10 CFR part 430, subpart B, appendices D2, F, and C1.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed definitions of ''active mode,'' ''off mode,'' ''standby mode,'' ''inactive mode,'' and ''combined low-power mode.''

2. Product Configuration and Installation Requirements

For additional clarity, in the November 2021 NOPR, DOE proposed to add definitions of ''combined cooking product,'' ''freestanding,'' ''built-in,'' and ''drop-in'' to new appendix I1 that were included in the version of appendix I as finalized in the December 2016 Final Rule, and installation instructions for each of these configurations. 86 FR 60974, 60991.

DOE proposed to define combined cooking product as ''a household cooking appliance that combines a cooking product with other appliance functionality, which may or may not include another cooking product. Combined cooking products include the following products: conventional range, microwave/conventional cooking top, microwave/conventional oven, and microwave/conventional range.'' *Id.*

DOE proposed to specify that a conventional cooking top or combined cooking product be installed in accordance with the manufacturer's instructions. *Id.* If the manufacturer's instructions specify that the product may be used in multiple installation conditions, the product would be installed according to the built-in configuration. *Id.* DOE proposed to require complete assembly of the product with all handles, knobs, guards, and similar components mounted in place, and that any electric resistance heaters, gas burners, and baffles be positioned in accordance with the manufacturer's instructions. *Id.*

DOE proposed that if the product can communicate through a network (*e.g.,* Bluetooth® or internet connection), the network function be disabled, if it is possible to disable it by means provided in the manufacturer's user manual, for the duration of testing. *Id.* If the network function cannot be disabled, or if means for disabling the function are not provided in the manufacturer's user manual, the product would be tested in the factory default setting or in the as-shipped condition. *Id.* These proposals are consistent with comparable provisions in final rule that DOE published for its microwave oven test procedure on March 30, 2022. 87 FR 18261, 18268.

DOE proposed to define ''freestanding'' as applying when ''the product is supported by the floor and is not specified in the manufacturer's instructions as able to be installed such that it is enclosed by surrounding

[67] Public Law 110–140 (enacted Dec. 19, 2007).

cabinetry, walls, or other similar structures.'' 86 FR 60974, 60991. DOE proposed that a freestanding combined cooking product be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above the product and 1 foot beyond both sides of the product, and with no side walls. *Id.*

DOE proposed to define ''built-in'' as applying when ''the product is enclosed in surrounding cabinetry, walls, or other similar structures on at least three sides, and can be supported by surrounding cabinetry or the floor.'' *Id.* DOE proposed to define ''drop-in'' as applying when ''the product is supported by horizontal surface cabinetry.'' *Id.* DOE proposed that a drop-in or built-in combined cooking product be installed in a test enclosure in accordance with manufacturer's instructions. *Id.*

DOE proposed that a conventional cooking top be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above the product and 1 foot beyond both sides of the product. *Id.*

DOE requested comment on its proposed definitions of product configurations and installation requirements. *Id.*

AHAM agreed with the proposed definitions for product configuration and installation requirements, stating that they align with existing industry standards. (AHAM, No. 12 at p. 14) AHAM commented that it is its understanding that DOE's proposal does not require additional installation requirements such as aesthetic or safety components (*e.g.,* anti-tipping brackets) that do not affect energy test performance, and stated that if this is not DOE's intent, then DOE should clarify its proposal and provide justification about why aesthetic or safety components should be installed, despite the added burden to install. (*Id.*)

NYSERDA urged DOE to amend the proposed procedure to account for network-connected energy usage during testing by requiring products be tested in the ''as-shipped'' condition to best represent typical use conditions. (NYSERDA, No. 10 at p. 2) According to NYSERDA, testing the product in the as-shipped condition is the best way to garner test results that are representative of real-world conditions, stating that it is unlikely the average consumer will read the manufacturer's instructions and disable network connectivity. (*Id.*)

The CA IOUs commented that DOE provides no information indicating that consumers will disable network functionality if they have a cooking top with this feature. (CA IOUs, No. 14 at p. 6) The CA IOUs asserted that testing the product in the ''as-shipped'' condition would be most representative of real-world conditions. (*Id.*) The CA IOUs stated that in the context of various DOE rulemakings, including the recently published microwave oven test procedure SNOPR, the CA IOUs have consistently commented that leaving networking functions in their as-shipped condition is most representative of real-world energy use in the absence of data indicating how consumers use connected functionality on the product under consideration. (*Id.*) The CA IOUs claimed, in particular, that given the limited user interface of many cooking products, granular control of networking capability (including on/off functionality) is seldom offered. (*Id.*) The CA IOUs commented that even if granular control of networking capability was offered, consumers would likely be unaware of the option to adjust such functions, or unable to determine how to do so. (*Id.*) The CA IOUs commented that they are fully supportive of innovation that enhances consumer utility but stated that this innovation ideally does not come at the expense of efficiency. (*Id.*) The CA IOUs commented that they understand the potential benefits of networked cooking products but stated that the implementation must be optimized properly. (*Id.*) The CA IOUs suggested that DOE's instruction to turn off networking as proposed in the test procedure provides an incentive for manufacturers to add a method for disabling connected functionality as cheaply as possible in a manner that may not be reasonably accessible to a consumer. (CA IOUs, No. 14 at pp. 6–7) The CA IOUs commented that this leaves consumers who do not take the active steps to disable their network functionality with unregulated energy consuming operations. (CA IOUs, No. 14 at p. 7) The CA IOUs commented that if DOE moves forward with its proposal to test with network functionality turned off when possible, DOE should provide market data illustrating that consumers do indeed take the active step to disable networking functionality. (*Id.*)

In response to AHAM's comment regarding installation requirements, DOE proposed to require complete assembly of the product with all handles, knobs, guards, and similar components mounted in place, and that any electric resistance heaters, gas burners, and baffles be positioned in accordance with the manufacturer's instructions. To the extent that an aesthetic or safety component does not correspond to any of these requirements, it would not be required to be installed.

DOE is aware of a number of cooking tops on the market with varying implementations of connected functionality. On such products, DOE has observed inconsistent implementations of these connected features across different brands, and that the design and operation of these features is continuously evolving as the market continues to grow for these products.

DOE remains unaware of any data available, nor did interested parties provide any such data, regarding the consumer use of connected features. Without such data, DOE is unable to establish a representative test configuration for assessing the energy consumption of connected functionality for conventional cooking tops during an average period of use, as required by EPCA. (See 42 U.S.C. 6293(b)(3))

DOE has determined that if network functionality cannot be disabled by the consumer, or if the manufacturer's user manual does not provide instruction for disabling the function, including the energy consumption of the enabled network function is more representative than excluding the energy consumption associated with the network function. For such products, the energy consumption of a connected function that cannot be disabled will be measured.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed definitions of product configurations and installation requirements.

3. Power Settings

In the November 2021 NOPR, DOE proposed to clarify power setting selection by adding definitions of ''power setting,'' ''infinite power settings,'' ''multi-ring cooking zone,'' and ''maximum power setting'' in new appendix I1, and by specifying which power settings are considered for each type of cooking zone. 86 FR 60974, 60991.

DOE proposed to define power setting as ''a setting on a cooking zone control that offers a gas flame, electric resistance heating, or electric inductive heating.'' *Id.*

DOE proposed to define infinite power settings as ''a cooking zone control without discrete power settings, allowing for selection of any power setting below the maximum power setting.'' *Id.*

DOE proposed to define a multi-ring cooking zone as ''a cooking zone on a

conventional cooking top with multiple concentric sizes of electric resistance heating elements or gas burner rings.'' *Id.*

DOE proposed to define maximum power setting as ''the maximum possible power setting if only one cookware item is used on the cooking zone or cooking area of a conventional cooking top, including any optional power boosting features. For conventional electric cooking tops with multi-ring cooking zones or cooking areas, the maximum power setting is the maximum power corresponding to the concentric heating element with the largest diameter, which may correspond to a power setting which may include one or more of the smaller concentric heating elements. For conventional gas cooking tops with multi-ring cooking zones, the maximum power is the maximum heat input rate when the maximum number of rings of the cooking zone are ignited.'' *Id.* This definition is based on the definition of ''maximum power'' in Section 3.14 of both IEC 60350–2:2017 and IEC 60350–2:2021, which includes a note specifying that boost function must be considered in determining the maximum power setting.

DOE also proposed to clarify in new appendix I1 which power settings would be considered in the search for the simmering setting, based on its testing experience. *Id.* On a multi-ring cooking zone on a conventional gas cooking top, all power settings would be considered, whether or not they ignite all rings of orifices. *Id.* On a multi-ring cooking zone on a conventional electric cooking top, only power settings corresponding to the concentric heating element with the largest diameter would be considered, which may correspond to operation with one or more of the smaller concentric heating elements energized. *Id.*

On a cooking zone with infinite power settings for which the available range of rotation from maximum to minimum is more than 150 rotational degrees, power settings that are spaced by 10 rotational degrees would be evaluated. *Id.* On a cooking zone with infinite power settings for which the available range of rotation from maximum to minimum is less than or equal to 150 rotational degrees, power settings that are spaced by 5 rotational degrees would be evaluated. *Id.* Based on its testing experience, DOE tentatively determined in the November 2021 NOPR that 5 or 10 rotational degrees, as appropriate, would provide sufficient granularity in determining the simmering setting. *Id.* Given the provision, detailed in section III.E.4 of this document, to normalize the energy use of the Energy Test Cycle to a value representative of a simmering test with a final water temperature of 90 °C, DOE tentatively determined in the November 2021 NOPR that testing more settings would be unduly burdensome. *Id.* at 86 FR 60991–60992.

For cooking tops with rotating knobs for selecting the power setting, DOE stated in the November 2021 NOPR that it is aware that the knob may yield different input power results for the same setting depending on the direction in which the knob is turned to reach that setting. *Id.* at 86 FR 60992. The cause of this is hysteresis caused by potential backlash in the knob or valve. *Id.* at 86 FR 60992. To avoid hysteresis and ensure consistent input power results for the same knob setting, DOE proposed in the November 2021 NOPR that the selection knob be turned in the direction from higher power to lower power to select the potential simmering setting for the test. *Id.* DOE also proposed that if the appropriate setting is passed, the test must be repeated after allowing the product to return to ambient conditions. *Id.* DOE tentatively determined in the November 2021 NOPR that this specification would help obtain consistent input power for a given power setting, particularly on gas cooking tops, and thus improve repeatability and reproducibility of the test procedure. *Id.*

DOE requested comment on its proposed definitions of ''power setting,'' ''infinite power settings,'' ''multi-ring cooking zone,'' and ''maximum power setting.'' *Id.* DOE also requested comment on its proposal for the subsets of power settings on each type of cooking zone that are considered as part of the identification of the simmering setting. *Id.* DOE further requested comment on its proposal that for cooking tops with rotating knobs for selecting the power setting, the selection knob always be turned in the direction from higher power to lower power to select the potential simmering setting for a simmering test. *Id.*

NYSERDA agreed with the clarification as to which direction knobs should be rotated during the potential simmering setting determination to ensure repeatability and reproducibility. (NYSERDA, No. 10 at p. 2)

The CA IOUs supported DOE's proposal to demarcate discrete test settings for cooking tops with infinite controls, stating that this would minimize the chance that laboratories conduct tests under different test conditions. (CA IOUs, No. 14 at p. 2) The CA IOUs also commented that it is not immediately clear where the 5 or 10-degree increments start. (CA IOUs, No. 14 at p. 7) The CA IOUs requested greater clarity from DOE on this setting selection process, and that DOE include visual examples to reference. (*Id.*)

In response to the CA IOUs' request for greater clarity on the starting location of the 5 or 10-degree increments on a cooking top knob with infinite controls, DOE notes that the lowest power setting on a cooking top is the first position that meets the definition of a power setting (*i.e.,* a setting that offers a gas flame, electric resistance heating, or electric inductive heating), irrespective of how the knob is labeled. The 5 or 10-degree increments would start at the location of the lowest power setting. In this final rule, DOE is adding this clarification on where the 5 or 10-degree increments start to section 2.8.3 of appendix I1. A small difference in determining the lowest power setting between testing laboratories should not affect the reproducibility of the test results because of the requirement to normalize the per-cycle energy use for the final water temperature, as discussed in section III.E.4 of this document. Indeed, in the 2021 Round Robin, each testing laboratory determined for itself the location of the lowest power setting based on these instructions and in aggregate produced results with reproducibility COVs that DOE has determined are acceptable.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed definitions of ''power setting,'' ''infinite power settings,'' ''multi-ring cooking zone,'' and ''maximum power setting''. DOE also finalizes its proposal, consistent with the November 2021 NOPR and with the changes discussed above, to specify the subset of power settings on each type of cooking zone that are considered as part of the identification of the simmering setting. DOE also finalizes its proposal to require that for cooking tops with rotating knobs for selecting the power setting, the selection knob always be turned in the direction from higher power to lower power to select the potential simmering setting for a simmering test.

4. Specialty Cooking Zone

In the November 2021 NOPR, DOE proposed to include a definition of a ''specialty cooking zone,'' including the clarification that such a cooking zone would not be tested under new appendix I1. 86 FR 60974, 60992. DOE proposed to define a specialty cooking zone as ''any cooking zone that is designed for use only with non-circular cookware, such as bridge zones, warming plates, grills, and griddles.

Specialty cooking zones are not tested under this appendix.'' *Id.*

DOE requested comment on its proposed definition of specialty cooking zone. *Id.*

The CA IOUs expressed uncertainty regarding why specialty cooking zones should be exempted from testing and recommended that DOE investigate the usage of specialty cooking zones. (CA IOUs, No. 14 at p. 7) The CA IOUs stated that testing units with specialty cooking zones would require a novel approach, but that they do not believe these units should be discounted simply because they are not a uniform circle. (*Id.*) The CA IOUs commented that IEC 60350–2:2017 has some direction for rectangular shapes and elliptical cookware. (*Id.*)

AHAM supported the exclusion of specialty cooking zones under the proposed test procedure and commented that specialty cooking zones for circular and non-circular cookware exist. (AHAM, No. 12 at p. 14) AHAM recommended removing the reference to non-circular cookware from the definition of a specialty cooking zone, stating that the proposed definition is too strict. (*Id.*)

In response to the CA IOUs' comment, the predominance of circular cookware on the market suggests that non-circular cookware is not representative of typical consumer usage. Therefore, a cooking zone designed for use only with non-circular cookware would not be expected to be used with any regularity, such that measuring its energy use would not be representative of the energy use of a cooking top during a representative average consumer use cycle, as is required by EPCA. (See 42 U.S.C. 6293(b)(3))

DOE further notes that its definition of specialty cooking zone does not categorize specialty cooking zones on the basis of the shape of the cooking zone itself; rather, the definition categorizes cooking zones designed for use *only with non-circular cookware* as one type of specialty cooking zone (emphasis added). See section III.E.1 of this document, for further discussion on testing non-circular cooking zones that are not specialty cooking zones.

For the reasons discussed, DOE finalizes its proposed definition of specialty cooking zone, consistent with the November 2021 NOPR. In response to AHAM's comment and for additional clarity, DOE is reordering the wording of the list of example specialty cooking zones within the definition to clarify that bridge zones are the only specific example provided of a cooking zone that is designed for use only with non-circular cookware; the references to warming plate, grill, and griddle are examples of types of specialty cooking zones other than cooking zones that are designed for use only with non-circular cookware.

5. Turndown Temperature

The turndown temperature (labeled ''Tc'' in both IEC 60350–2:2017 and IEC 60350–2:2021) is the measured water temperature at the time at which the tester begins adjusting the cooking top controls to change the power setting, *i.e.,* at ''turndown.'' The target turndown temperature (which DOE proposed to label ''Tc_{target}'' in the November 2021 NOPR) is calculated for each cooking zone according to Section 7.5.2.1 of both IEC 60350–2:2017 and IEC 60350–2:2021 and section 3.1.4.2 of appendix I1, after conducting the overshoot test.[68] The target turndown temperature is the ''ideal'' turndown temperature, in that it is calculated such that the temperature of the water can rise higher than 90 °C with the lowest amount of energy use after the power is reduced, making use of the stored thermal energy of the cooking top, test vessel, and water load. Tc_{target} is calculated as 93 °C minus the amount that the water temperature ''overshoots'' the temperature at which the power is turned off during the overshoot test. If the measured turndown temperature, Tc, is not between −0.5 °C and +1 °C of Tc_{target}, the simmering test evaluated according to section 3.1.4.5 of appendix I1 is considered invalid and must be repeated after allowing the product to return to ambient conditions.

In response to the November 2021 NOPR, Whirlpool commented that when the time at which the tester has physically taken the action to rotate the knob is different than the time at which the power stops, the identification of the turndown temperature is unclear. (Whirlpool, Public Meeting Transcript, No. 8 at p. 15) Whirlpool commented that its data has shown that if the element stays on after the knob has been physically rotated, the water temperature exceeds what Whirlpool characterized as the 93 °C limit. (Whirlpool, Public Meeting Transcript, No. 8 at p. 16)

In response to Whirlpool's concern that the water temperature may exceed 93 °C during the simmering test, DOE notes that the test procedure does not define a temperature limit (at 93 °C or any other temperature) that the water temperature must remain under for a simmering test to be valid. Although the value of 93 °C is used as a constant in the formula for calculating Tc_{target}, this formula does not imply a temperature limit during the simmering test.

Nevertheless, DOE agrees with Whirlpool that additional clarification regarding the turndown temperature is needed, in particular to address situations when there is a delay between the time at which the tester turns down the controls and the time at which the power decreases accordingly. DOE considered the test burden of defining the turndown temperature based on the time at which the power decreases. This led DOE to determine that the burden could be significant for products exhibiting this behavior because a larger than typical number of tests could be considered invalid on the basis of Tc not being within the required range and subsequently needing re-testing. DOE compared this burden to the potential repeatability concerns of defining the turndown temperature based on the time at which the tester takes the physical action of adjusting the cooking top controls (*e.g.,* rotating the knob) if the power decrease lag is unrepeatable. In DOE's testing, for many electric cooking tops, the power level at the lower power settings is achieved by duty-cycling the power to the heating element. For some units this duty cycle may start with the ''on'' part of the duty cycle. For these units in particular, it may be impossible to determine retroactively from the data when the cooking top power setting has been changed, because the measured power will remain at the maximum output even after the setting has been changed. Therefore, DOE has determined that defining the turndown temperature at the time at which the power drops would not be repeatable. Therefore, in this final rule, DOE is defining the turndown temperature based on the time at which the tester adjusts the cooking top controls to change the power setting. In particular, because it can take several seconds to adjust the cooking top controls on certain cooking tops, DOE is defining the turndown temperature based on the time at which the tester *begins* adjusting the cooking top controls (emphasis added).

In this final rule, DOE is including definitions for the target turndown temperature and the turndown temperature in section 1 of appendix I1. DOE defines target turndown temperature (Tc_{target}) as ''the temperature as calculated according to

[68] The overshoot test is a test conducted before any simmering tests are initiated. The appropriate test vessel and water load are placed on the heating element or burner, which is turned to the maximum power setting. The power or heat input is shut off when the water temperature reaches 70 °C. The maximum water temperature reached after the power/heat input is shut off is used to calculate the target turndown temperature.

Section 7.5.2.1 of IEC 60350–2:2021 and section 3.1.4.2 of appendix I1, for each cooking zone.'' DOE defines turndown temperature (Tc) for each cooking zone, as ''the measured water temperature at the time at which the tester begins adjusting the cooking top controls to change the power setting.'' The test procedure adopted in this final rule uses the defined terms where applicable.

In the November 2021 NOPR, DOE proposed to include in new appendix I1 the formula for calculating the target turndown temperature after conducting the overshoot test based on DOE testing experience. That experience has shown that referencing the definition of this value in IEC 60350–2 (rather than providing the definition within the DOE test procedure) can lead to inadvertent errors in performing the calculation. 86 FR 60974, 60992. The target turndown temperature is calculated as 93 °C minus the difference between the maximum measured temperature during the overshoot test, T_{max}, and the 20-second average temperature at the time the power is turned off during the overshoot test, T_{70}. Two common mistakes in calculating the target turndown temperature are using the target value of 70 °C rather than the measured T_{70} in the formula and failing to round the target turndown temperature to the nearest degree Celsius. *Id.* By including the formula for the target turndown temperature in the new appendix I1, DOE stated in the November 2021 NOPR that it aims to reduce the incidence of such errors. *Id.*

DOE requested comments on its proposal to include the formula for the target turndown temperature in the new appendix I1. *Id.*

DOE did not receive any comments regarding its proposal to include the formula for the target turndown temperature in the new appendix I1.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to include the formula for the target turndown temperature in the new appendix I1.

H. Test Conditions and Instrumentation

In this final rule, DOE is incorporating the test conditions and instrumentation requirements of IEC 60350–2:2021 into the new appendix I1 with the following additions.

1. Electrical Supply

Section 5.2 of both IEC 60350–2:2017 and IEC 60350–2:2021 specifies that the electrical supply is required to be at ''the rated voltage with a relative tolerance of ±1%'' and ''the rated frequency ±1%.'' Both IEC 60350–2:2017 and IEC 60350–2:2021 further specify that the supply voltage and frequency shall be the nominal voltage and frequency of the country in which the appliance is intended to be used. In the November 2021 NOPR, DOE proposed to specify in new appendix I1 that the electrical supply for active mode testing be maintained at either 240 volts ±1 percent or 120 volts ±1 percent, according to the manufacturer's instructions, and at 60 Hz ± 1 percent, except for products which do not allow for a mains electrical supply. 86 FR 60974, 60992.

DOE requested comment on its proposed electrical supply requirements for active mode testing. *Id.*

DOE did not receive any comments regarding the proposed electrical supply requirements for active mode testing.

During the 2021 Round Robin, DOE observed intermittent instantaneous voltage fluctuations outside of the required tolerance on certain units in its test sample. DOE understands that these fluctuations are a normal response to the turning on or off of major electrical components and that such momentary fluctuations do not measurably affect the unit's energy consumption. The Task Force has added a statement on the voltage conditions to AHAM's draft test method, stating that ''The actual voltage shall be maintained and recorded throughout the test. Instantaneous voltage fluctuations caused by the turning on or off of electrical components shall not be considered.'' This is consistent with language included in AHAM's HRF–1–2019 test method, ''Energy and Internal Volume of Consumer Refrigeration Products'', which DOE has incorporated by reference into its test procedures for refrigerators, refrigerator-freezers, and freezers, and miscellaneous refrigeration products. 86 FR 56790, 56801 (Oct. 12, 2021). In this final rule, DOE incorporates this same language into its electrical supply specification for active mode testing of conventional cooking tops.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to specify in new appendix I1 that the electrical supply for active mode testing be maintained at either 240 volts ±1 percent or 120 volts ±1 percent, according to the manufacturer's instructions, and at 60 Hz ± 1 percent, except for products which do not allow for a mains electrical supply, with the new addition regarding instantaneous fluctuations discussed above.

2. Water Load Mass Tolerance

In the November 2021 NOPR, DOE proposed to specify a tolerance on the water load mass in the new appendix I1. 86 FR 60974, 60992. Neither the version of appendix I as finalized in the December 2016 Final Rule, IEC 60350–2:2017 nor IEC 60350–2:2021 includes a tolerance on the water load mass. DOE proposed to specify a tolerance of ± 0.5 grams (''g'') for each water load mass, to improve the repeatability and reproducibility of the test procedure. *Id.*

DOE requested comment on the proposed tolerance of ± 0.5 g for each water load mass. *Id.*

NYSERDA commented that it supports DOE's effort to define a tolerance for water load mass to ensure repeatability and reproducibility. (NYSERDA, No. 10 at p. 2)

AHAM opposed DOE's proposal to set the allowable tolerance on the water load mass as ± 0.5 g, stating that the proposed tolerance is too small and increases test burden. (AHAM, No. 12 at p. 14) AHAM commented that DOE has not presented data showing the need for this tight of a tolerance and that AHAM has not seen evidence that tightening this tolerance will reduce overall test variation. (*Id.*) AHAM commented that it requests that DOE investigate alternative tolerances for the water load mass. (*Id.*)

In response to AHAM's comment, DOE notes that the ± 0.5 g water load mass tolerance was used for the 2021 Round Robin testing, and none of the participating laboratories reported any problem achieving this tolerance. Furthermore, this testing achieved repeatable results. In addition, no stakeholders provided any data indicating that a wider tolerance would not negatively impact the results.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to specify a tolerance of ± 0.5 g for each water load mass.

3. Test Vessel Flatness

In its petition, AHAM raised concerns about the impact of pan warpage on the repeatability and reproducibility of the test procedure. 83 FR 17944, 17958. In the November 2021 NOPR, DOE investigated potential pan warpage over repeated test cycles. 86 FR 60974, 60992.

DOE test data showed some amount of variation in the flatness measurement over time for each test vessel, but there was no consistent or substantive trend. *Id.* at 86 FR 60993. Therefore, in the November 2021 NOPR, DOE tentatively determined that pan warpage is not an issue of concern for the test procedure. *Id.*

DOE requested comment on its proposed determination that pan

warpage does not affect repeatability and reproducibility of the test procedure. *Id.*

AHAM commented that DOE's assessment of the effects of pan warpage are inadequate because no gas units were evaluated. (AHAM, No. 12 at p. 15) AHAM commented that if part of the test vessel is closer or further from the heating source, it will likely have an effect on how the water is heated. (*Id.*) AHAM commented that it requests information on the types of electric units that DOE evaluated, particularly induction units. (*Id.*) AHAM commented that this may have implications relating to the use of the same pots for gas and electric units, stating that warpage from gas testing may have significant impact on induction testing when using the same vessels, for example. (*Id.*)

In response to AHAM's comment, DOE notes that while it does not have data on the effects of gas cooking top testing on test vessel flatness at this time, the 2021 Round Robin testing, which achieved repeatable results, was conducted using the same test vessels for both electric and gas cooking tops. This indicates that if any warpage did occur, it did not significantly impact the repeatability or reproducibility of test results on either gas or electric cooking tops.

In response to AHAM's request for information on DOE's flatness testing, Table III.3 lists the number of test cycles that were run on each unit type for each test vessel size for which flatness data was presented in the November 2021 NOPR.

TABLE III.3—NUMBER OF TEST CYCLES ON EACH UNIT TYPE FOR EACH TEST VESSEL SIZE PRESENTED IN THE NOVEMBER 2021 NOPR

Test vessel diameter (mm)	150	180	210	270	Total
Number of Cycles on Coil Units	21	7	0	0	28
Number of Cycles on Radiant Units	4	12	10	5	31
Number of Cycles on Induction Units	0	6	0	0	6

For the reasons discussed, DOE finalizes its determination, consistent with the November 2021 NOPR, that to the extent pan warpage occurs during testing, it does not affect repeatability and reproducibility of the test procedure.

I. Standby Mode and Off Mode Energy Consumption

1. Incorporation by Reference of IEC 62301

EPCA requires DOE to include the standby mode and off mode energy consumption in any energy consumption metric, if technically feasible. (See 42 U.S.C. 6295(gg)(2)(A)) In the October 2012 Final Rule, DOE incorporated IEC 62301 Second Edition for measuring the power in standby mode and off mode of conventional cooking products. This includes five provisions: the room ambient air temperature from Section 4, Paragraph 4.2 of IEC 62301 Second Edition, the electrical supply voltage from Section 4, Paragraph 4.3.2 of IEC 62301 Second Edition, the watt-meter from Section 4, Paragraph 4.4 of IEC 62301 Second Edition, portions of the installation and set-up from Section 5, Paragraph 5.2 of IEC 62301 Second Edition, and the stabilization requirements from Section 5, Paragraph 5.1, Note 1 of IEC 62301 Second Edition. 77 FR 65942, 65948. DOE also specified that the measurement of standby mode and off mode power be made according to Section 5, Paragraph 5.3.2 of IEC 62301 Second Edition, except for conventional cooking products in which power varies as a function of the clock time displayed in standby mode (see section III.I.2 of this final rule). *Id.* This procedure is used by microwave ovens in the current version of appendix I. In the November 2021 NOPR, DOE proposed to include the same procedure in the new appendix I1 for conventional cooking tops. 86 FR 60974, 60993.

DOE requested comment on its proposal to incorporate IEC 62301 Second Edition to provide the method for measuring standby mode and off mode power, except for conventional cooking products in which power varies as a function of the clock time displayed in standby mode. *Id.*

DOE did not receive any comments regarding its proposal to incorporate IEC 62301 Second Edition to provide the method for measuring standby mode and off mode power, except for conventional cooking products in which power varies as a function of the clock time displayed in standby mode.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to incorporate IEC 62301 Second Edition to provide the method for measuring standby mode and off mode power, except for conventional cooking products in which power varies as a function of the clock time displayed in standby mode.

2. Standby Power Measurement for Cooking Tops With Varying Power as a Function of Clock Time

In the October 2012 Final Rule, DOE determined that for conventional cooking products in which power varies as a function of the clock time displayed in standby mode, measuring standby mode and off mode power according to Section 5, Paragraph 5.3.2 of IEC 62301 Second Edition would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the test measurement. 77 FR 65942, 65948. Therefore, the October 2012 Final Rule required a modified approach from IEC 62301 First Edition. It implemented the following language in appendix I: for units in which power varies as a function of displayed time in standby mode, clock time would be set to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 First Edition, and the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 First Edition would be used, but with a single test period of 10 minutes +0/-2 sec after an additional stabilization period until the clock time reached 3:33. *Id.*

In a final rule published on January 18, 2013, DOE implemented the same approach for microwave ovens in appendix I. 78 FR 4015, 4020.

In the November 2021 NOPR, DOE proposed to incorporate in the new appendix I1 the same approach for measuring the standby power of cooking tops in which the power consumption of the display varies as a function of the time displayed, with clarifications. 86 FR 60974, 60994. In response to a test laboratory's feedback, DOE proposed to update the wording from that finalized in the October 2012 Final Rule to provide additional direction regarding the two stabilization periods. *Id.* The proposed language read, ''For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of an initial stabilization period, as specified in Section 5, Paragraph 5.3 of IEC 62301

First Edition. After an additional 10-minute stabilization period, measure the power use for a single test period of 10 minutes +0/−2 seconds that starts when the clock time first reads 3:33. Use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 First Edition.'' *Id.*

DOE requested comment on its proposal to incorporate into appendix I1 IEC 62301 First Edition for measuring standby mode and off mode power for conventional cooking tops in which power varies as a function of the clock time displayed in standby mode. *Id.* DOE did not receive any comments regarding this proposal.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to incorporate IEC 62301 First Edition for measuring standby mode and off mode power for conventional cooking tops in which power varies as a function of the clock time displayed in standby mode.

J. Metrics

1. Annual Active Mode Energy Consumption

In the November 2021 NOPR, DOE proposed to calculate cooking top annual active mode energy consumption as the average normalized per-cycle energy use across all tested cooking zones multiplied by the number of annual cycles. 86 FR 60974, 60994. The per-cycle energy use would be normalized in two ways: first, by interpolating to represent a final water temperature of 90 °C, as described in section III.E.4 of this document, and second, by scaling according to the ratio of a representative water load mass to the water mass used in the test. *Id.*

To determine the representative water load mass for both electric and gas cooking tops for the December 2016 Final Rule, DOE reviewed the surface unit diameters and input rates for cooking tops (including those incorporated into combined cooking products) available on the market at the time of a supplemental NOPR that DOE published prior to the December 2016 Final Rule. 81 FR 57374, 57387 (Aug. 22, 2016). To determine the market-weighted average water load mass, DOE used the methodology in EN 60350–2:2013, which is the same as the methodology in IEC 60350–2:2017 and IEC 60350–2:2021 for selecting test vessel diameters and their corresponding water load masses. DOE determined that the market-weighted average water load mass for both electric and gas cooking top models available on the U.S. market was 2,853 g (equivalent to around 12 U.S. cups or 0.75 gallons) and used that value in the December 2016 Final Rule. 81 FR 91418, 91437.

DOE proposed in the November 2021 NOPR to use the same representative water load mass for per-cycle energy use normalization of 2,853 g in the new appendix I1. 86 FR 60974, 60994.

DOE requested comment on its proposal to use a representative water load mass of 2,853 g in the new appendix I1. *Id.*

AHAM commented that it believes that DOE's proposed representative water load mass of 2,853 g is overestimated and multiplied by more than one cooking use per day. (AHAM, No. 12 at p. 15) AHAM commented that it is unclear that this load is representative of actual use. (*Id.*) AHAM asked DOE to reanalyze this calculation using updated appliance shipments and stated that AHAM is glad to consider providing updated shipments under confidentiality agreement upon request. (*Id.*)

In response to AHAM's comment, DOE notes that it does not expect the representative water load mass per cycle to have changed since 2016. DOE also notes, as discussed in further detail below, that AHAM's opposition to the proposed water load mass value is based in part on a mistaken understanding that the annual active-mode energy consumption is calculated based on 12 cups of water per *cooking zone* per day (emphasis added). DOE clarifies that the annual active-mode energy consumption, as proposed in the November 2021 NOPR, was calculated based on 12 cups of water per *cooking top* per day (emphasis added); *i.e.,* not multiplied by the number of cooking zones on the cooking top.

For reference, DOE further notes that a water load of 12 cups represents roughly enough water to cook 12 ounces of pasta, which is approximately 3–5 individual servings.[69] This further supports the determination of 12 cups of water per cooking top per day as a reasonable estimate of representative consumer use.

For these reasons, DOE maintains its determination that 2,853 g per cooking top per day is a representative water load mass.

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to use a representative water load mass of 2,853 g per cooking top per day in the new appendix I1.

In the December 2016 Final Rule, DOE used data from the 2009 Residential Energy Consumption Survey (''RECS'') and a review of field energy consumption survey data of residential cooking from 2009 and 2010 to estimate 207.5 cycles per year for electric cooking tops and 214.5 cycles per year for gas cooking tops. 81 FR 91418, 91438. For the November 2021 NOPR, DOE determined an updated value of annual cooking top cycles based on analyzing data from three more recent sources. 86 FR 60974, 60994.

In the November 2021 NOPR, DOE analyzed the 5,686 household responses from the 2015 RECS to estimate the number of annual cooking top cycles by installation configuration. *Id.* The 2015 RECS asked respondents, geographically distributed in the United States, to provide the number of uses per week of their standalone cooking top and the cooking top portion of a combined cooking product (which included a cooking top with a conventional oven.) From these weekly frequency-of-use data, DOE calculated a weighted-average annual number of cooking top cycles of 418. *Id.* This value represents an average of both gas and electric cooking tops, as well as an average of both standalone cooking tops and the cooking top components of combined cooking products. In the November 2021 NOPR, DOE tentatively determined that a single value for both gas and electric cooking tops is most representative of consumer usage, as DOE is not aware of any reason for consumers of products with different energy sources to use their cooking products more or less frequently. *Id.*

In the November 2021 NOPR, DOE also reviewed data provided by AHAM through its Task Force, which summarized the cooking patterns of 3,508 consumers with connected cooking products, based on information collected via their network functions. *Id.* Although the data did not identify specific geographical locations, AHAM indicated the sample of consumers represented a distribution of connected cooking product owners across the United States. *Id.* This AHAM data set showed an average annual number of cooking top cycles of 365. *Id.* DOE also analyzed a third set of field-metered data (*i.e.,* data collected from measuring the consumption of individual cooking tops as used by consumers in real-world installations), which showed a median of 437 annual cooking top cycles. *Id.*

In the November 2021 NOPR, DOE proposed to use the 2015 RECS value of 418 cycles per year for calculating

[69] A reputable cooking website states that 4 quarts (16 cups) of water are needed to cook 1 pound (16 ounces) of pasta; *i.e.,* 1 cup of water per ounce of pasta. The same source states that 2 ½ to 4 ½ ounces of pasta represent an individual serving. Using this conversion, 12 ounces of pasta equates to 2.7 to 4.8 servings. See *www.eataly.com/us_en/magazine/how-to/how-to-cook-pasta/*. Last accessed April 8, 2022.

annual active mode energy use. *Id.* This is the median of the three considered values and is based on the largest sample size and broadest distribution by geography and household characteristics.

DOE requested comment on its proposal to use a value of 418 annual cooking top cycles per year. *Id.*

The CA IOUs commented that they recommend that frequency of use data be updated to include information collected showing the impact of the COVID–19 pandemic on home cooking habits, as identified in the CA IOUs' comment in response to DOE's notification of proposed determination not to amend energy conservations standards for conventional cooking products published on December 14, 2020. (CA IOUs, No. 14 at p. 7 referencing 85 FR 80982) The CA IOUs commented referencing a marketing and public relations firm's study [70] which found that COVID–19 has increased cooking habits and that consumers expect that these new habits will persist. (*Id.* referencing EERE–2014–BT–STD–005, CA IOUs, No. 89 at p. 3) The CA IOUs commented that this projection would increase annual energy consumption projections. (CA IOUs, No. 14 at p. 7)

AHAM commented that DOE's proposed value of 418 annual cooking top cycles per year in combination with the proposed 2,853 g representative water load mass contribute to an overestimate of annual energy use. (AHAM, No. 12 at p. 15) AHAM commented that DOE should provide details on its methodology and calculation steps justifying the annual number of cycles from 2015 RECS data. (*Id.*) AHAM commented that it believes the proposed number of annual cycles is too high and that it exaggerates the representative cycles and the representative water load mass, stating that these values should not be determined separately. (*Id.*) AHAM commented that the proposed test procedure requires the energy of all four cooking zones to be calculated during a heat up and a simmer, and stated that by its calculation, the annual energy use represents the equivalent of 1,672 operations of one cooking zone's heat up and simmer per year. (*Id.*) AHAM commented that the energy test represents, on average, 1,400 seconds of operation per run on each cooking zone and stated that this equates to 23.3 minutes per cooking zone or, by AHAM's calculation, a total of 93 minutes of operations per unit per test (23.3 minutes × 4 cooking zones). (*Id.*) AHAM commented that the operation time of 93 minutes multiplied by DOE's proposed number of cycles of 418 and divided by 365 days in a year results in 107 minutes (1.8 hours) of total operation of the cooking top per day. (*Id.*) AHAM commented that this value conflicts with AHAM consumer research and manufacturers connected data on usage, which show daily usage of 70.1 minutes and 53.8 minutes, respectively. (AHAM, No. 12 at pp. 15–16)

In response to the CA IOUs' comment, DOE notes that while the CA IOUs provided data suggesting that COVID–19 has increased cooking habits and that consumers expect that these new habits will persist, DOE does not have data reflecting the degree to which these cooking habits may have changed. DOE is also unable to make projections about future trends in consumer cooking habits. DOE will continue to monitor patterns in consumer frequency of use data and will consider updating its annual energy consumption projections in the future, should additional data suggest that updates are warranted.

As AHAM's requested, below are details about how DOE calculated its proposed value of 418 annual cooking top cycles per year. DOE divided the weekly frequency of use data obtained from 2015 RECS data by 7 to obtain a daily frequency of use of 1.144 average daily cooking top cycles across all product types that include a cooking top. DOE then multiplied 1.144 daily cooking top cycles by 365 days in a year to obtain 418 annual cooking top cycles per year.[71]

In response to AHAM's comment regarding its calculation of daily cooking top usage, the annual energy calculation proposed in the November 2021 NOPR represents 418 annual cycles multiplied by the average of all heating elements on a cooking top, not, as AHAM stated, the sum of all heating elements. For example, as proposed, on a cooking top with four cooking zones, the proposed 418 annual cooking top cycles would be allocated over all 4 cooking zones, for an average of 104.5 annual cooking cycles per cooking zone. DOE does not expect, nor does the test procedure calculation project, that each cooking zone be used for 418 annual cycles (for a total of 1,672 cycles on a cooking top with four cooking zones), as posited by AHAM.

Assuming a range of 23 to 37 minutes per test cycle (as supported by DOE's test data),[72] 418 annual cooking top cycles would result in a range of 9,614 [73] to 15,466 [74] minutes of cooking top use per year, or an average range of 34 to 42 minutes per day. This is within the range of data AHAM has provided as part of this rulemaking, and the ongoing Task Force, which suggest daily cooking top use ranging from 18 minutes [75] to 70.1 minutes [76] (see section III.J.2 for further discussion of cooking top cycle time).

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to use a value of 418 annual cooking top cycles per year.

2. Combined Low-Power Mode Hours

The number of cooking top annual combined low-power mode hours is calculated as the number of hours in a year, 8,760, minus the number of annual active mode hours for the cooking top, which for most product types is equal to the number of annual cycles multiplied by cycle time. Additional calculations, as discussed below, are necessary for the cooking top component of a combined cooking product.

In a NOPR preceding the October 2012 Final Rule, DOE investigated the hours and energy consumption associated with each possible operating mode for conventional cooking tops, including inactive, Sabbath, off, and active modes. 75 FR 75290, 75310 (Dec. 2, 2010). In the October 2012 Final Rule, DOE described ''Sabbath mode'' as a mode in which the automatic shutoff is overridden to allow for warming of pre-cooked foods during such periods as the Jewish Sabbath. 77 FR 65942, 65952. In its analysis leading up to the October 2012 Final Rule, DOE assigned the hours for which the cooking product is in Sabbath mode as active mode hours, because the energy use of those hours is similar to the energy use of the active mode. 75 FR 75290, 75311. DOE estimated an equivalent of 8.6 annual hours in Sabbath mode, based on the number of annual work-free hours and

[70] Hunter: Food Study 2020 Special Report (America Gets Cooking: The Impact of COVID–19 on Americans' Food Habits). Published in December 2020. Available at *www.hunterpr.com/foodstudy_coronavirus/*.

[71] 1.144 × 365 = 417.6, rounded to 418.

[72] Based on DOE's test data, the time to t_{90} (see definition in section III.E.3 of this document) varies by technology type. For induction units, the time to t_{90} is around 3 minutes; for coil and radiant units, the time to t_{90} is around 6–9 minutes; and for gas units, the time to t_{90} is around 15–17 minutes. The test cycle duration is equal to the time to t_{90} plus a 20-minute simmering period.

[73] 23 minutes per test cycle × 418 annual cooking top cycles = 9,614 minutes of cooking top use per year.

[74] 37 minutes per test cycle × 418 annual cooking top cycles = 15,466 minutes of cooking top use per year.

[75] See discussion of this data in section III.J.2 of this document.

[76] See AHAM, No. 12 at p. 15.

the percentage of U.S. households that observe kosher practices. *Id.* at 75 FR 75309. In that rule, DOE scaled the 8.6 hours according to the number of annual cooking cycles, the number of cooking products per household, and an assumption that a cooking top would only be used on the Sabbath a quarter of the time. *Id.* This resulted in 2.2 hours per year for standalone cooking tops, and 8.8 hours per year for conventional ranges.

In 2010, DOE estimated that the total number of cooking top cycles per year was 211 (see section III.J.1 of this document), the average cycle time was 1 hour, and cooking tops spent 2.1 annual hours in Sabbath mode. *Id.* Therefore, in the October 2012 Final Rule, DOE specified that the number of annual active-mode hours was 213.2 and the number of annual combined low-power mode hours was 8,546.9. 77 FR 65942, 65994.

In the December 2016 Final Rule, DOE observed that for combined cooking products, the annual combined low-power mode energy consumption could be measured only for the combined cooking product and not the individual components. 81 FR 91418, 91423. For a combined cooking product, DOE calculated the annual combined low-power mode of the conventional cooking top component. This involved allocating a portion of the combined low-power mode energy consumption measured for the combined cooking product to the conventional cooking top component using the estimated annual cooking hours for the given components in the combined cooking product. *Id.*

In the November 2021 NOPR, DOE proposed to update the estimate of the annual combined low-power mode hours for standalone cooking tops and for the cooking top component of combined cooking products. This involved using more recent estimates for the number of annual cooking top cycles and the representative cycle time. 86 FR 60974, 60995. As discussed in section III.J.1 of this document, DOE is using a value of 418 annual cooking top cycles for all cooking tops.

For representative average cooking top cycle time, in the November 2021 NOPR, DOE reviewed data provided by AHAM. The data summarized the cooking patterns of 3,508 consumers with connected cooking products, based on information collected via their network functions. *Id.* Although the data did not identify specific geographical locations, AHAM indicated the sample of consumers represented a distribution of connected cooking product owners across the United States. This AHAM data set showed an average cooking top cycle time of 18 minutes. However, as DOE stated in the November 2021 NOPR, it is concerned that because higher-income households tend to purchase connected cooking products, usage patterns of those consumers may not be representative of the usage patterns for all U.S. consumers. *Id.*

DOE also analyzed field-metered data that showed a median cycle time of 31 minutes. *Id.* DOE expects the distribution of usage patterns among these homes are more representative of consumer habits in the United States as a whole because the metering was not limited to premium products. In the November 2021 NOPR, DOE proposed to calculate the number of cooking top annual active mode hours per installation configuration by multiplying the annual cycles estimated from the 2015 RECS by the 31-minute median cycle time, and then adding the appropriate number of Sabbath mode hours.[77] *Id.* DOE estimated the number of annual active mode hours for the overall cooking product using five additional values. The first additional value was the number of cooking tops per household, which was determined to be 1.02 using the 2015 RECS. Second was the annual number of conventional oven cycles conducted per year on combined cooking products, which was determined to be 145 using the 2015 RECS. Third was the number of microwave oven cycles per year, which was determined to be 627 using the 2015 RECS. Fourth was the average cycle time for a conventional oven, which was assumed to be 1 hour. Fifth was the average cycle time for a microwave oven, which was assumed to be 6 minutes. *Id.*

DOE proposed to estimate the annual combined low-power mode hours for the overall product for each installation configuration by subtracting the resulting annual active mode hours from 8,760 annual hours. *Id.* Finally, DOE calculated the percentages of combined lower-power mode hours assigned to the cooking top component by determining the proportion of overall active mode hours that are associated with the cooking top component of the combined cooking product. *Id.* The results for DOE's combined low-power mode usage factors and resulting cooking top annual combined low-power mode hours proposed in the November 2021 NOPR are shown in Table III.4.

TABLE III.4—COMBINED LOW-POWER MODE USAGE FACTORS PROPOSED IN THE NOVEMBER 2021 NOPR

Product type	Overall product		Cooking top	
	Active mode hours per year	Combined low-power mode hours per year	Percentage of overall combined low-power mode hours allocated to the cooking top (%)	Combined low-power mode hours per year
Standalone cooking top	216	8,544	100	8,544
Conventional range (cooking top + conventional oven)	368	8,392	60	5,004
Cooking top + microwave oven	279	8,481	77	6,560
Cooking top + conventional oven + microwave oven	431	8,329	51	4,228

DOE requested comment on its proposed usage factors and annual hours for cooking top combined low-power mode, as well as on any of the underlying assumptions. *Id.*

[77] Given the value of 1.02 cooking tops per household determined using 2015 RECS, and using the same 25-percent assumption of the percent of time a cooking top is left on during the Sabbath (as opposed to a conventional oven), DOE assumed 2.2 hours per year in Sabbath mode for standalone cooking tops and for combined cooking products comprised of a microwave oven and a cooking top; and 8.8 hours per year in Sabbath mode for combined cooking products that include a conventional oven.

DOE did not receive any comments regarding its proposed usage factors and annual hours for cooking top combined low-power mode, or on any of the underlying assumptions, except for comments about the number of annual cycles, as discussed in section III.J.1 of this document.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed usage factors and annual hours for cooking top combined low-power mode.

3. Annual Combined Low-Power Mode Energy

In the November 2021 NOPR, DOE proposed that the annual energy in combined low-power mode for a cooking top be calculated as follows. Multiply the power consumption of the overall cooking product in standby and/or off mode (see sections III.I.1 and III.I.2 of this document) by the number of annual combined low-power mode hours for the cooking top or cooking top component of a combined cooking product (see section III.J.2 of this document). 86 FR 60974, 60995–60996. As DOE has done in the test procedures for other appliances that can have either an inactive (standby) mode, an off mode, or both, DOE proposed that the total number of cooking top annual combined low-power mode hours be allocated to each of inactive mode or off mode as illustrated in Table III.5. *Id.* at 86 FR 60996.

TABLE III.5—ALLOCATION OF COOKING TOP COMBINED LOW-POWER MODE HOURS FROM THE NOVEMBER 2021 NOPR

Types of low-power mode(s) available	Allocation to inactive mode	Allocation to off mode
Both inactive and off mode	0.5	0.5
Inactive mode only	1	0
Off mode only	0	1

DOE requested comment on its proposed allocation of combined low-power mode hours. *Id.*

DOE did not receive any comments regarding its proposed allocation of combined low-power mode hours.

For the reasons discussed, DOE finalizes, consistent with the November 2021 NOPR, its proposed allocation of combined low-power mode hours.

4. Integrated Annual Energy Consumption

In the November 2021 NOPR, DOE proposed to define the integrated annual energy consumption (''IAEC'') for each tested cooking top. 86 FR 60974, 60996. For electric cooking tops, IAEC was defined in kilowatt-hours (''kWh'') per year and is equal to the sum of the annual active mode energy and the annual combined low-power mode energy. *Id.* For gas cooking tops, IAEC was defined in kilo-British thermal units (''kBtu'') per year and is equal to the sum of the annual active mode gas energy consumption, the annual active mode electric energy consumption (converted into kBtu per year), and the annual combined low-power mode energy (converted into kBtu per year). *Id.*

DOE did not receive any comments regarding its proposed definition of IAEC.

In this final rule, DOE finalizes, consistent with the November 2021 NOPR, its proposed definition of IAEC.

5. Annual Energy Consumption and Annual Cost

Section 430.23(i) of title 10 of the CFR lists the test procedures for measuring the energy consumption of cooking products. As there are no current test procedures for conventional cooking tops, 10 CFR 430.23(i) contains provisions only for microwave ovens.

In the November 2021 NOPR, DOE proposed to renumber the existing microwave oven paragraph as 10 CFR 430.23(i)(1) and to add new paragraphs (i)(2) through (i)(6) containing provisions for measuring the electrical energy consumption, gas energy consumption, and annual cost of conventional cooking tops. 86 FR 60974, 60996.

New paragraph (i)(2) as proposed in the November 2021 NOPR would provide the means of calculating the integrated annual energy consumption for a conventional cooking top, whether electric or gas, including any conventional cooking top component of a combined cooking product. *Id.* The result would be rounded to the nearest 1 kWh per year for electric cooking tops, and to the nearest 1 kBtu per year for gas cooking tops. *Id.*

New paragraph (i)(3) as proposed in the November 2021 NOPR would provide the means of calculating the total annual gas energy consumption of a conventional gas cooking top, including any conventional cooking top component of a combined cooking product. *Id.* The result would be rounded to the nearest 1 kBtu per year. *Id.*

New paragraph (i)(4) as proposed in the November 2021 NOPR would provide the means of calculating the total annual electrical energy consumption for a conventional cooking top, whether electric or gas, including any conventional cooking top component of a combined cooking product. *Id.* The result would be rounded to the nearest 1 kWh per year. *Id.* The total annual electrical energy consumption of a conventional electric cooking top would equal the integrated annual energy consumption of the conventional electric cooking top, as determined in paragraph (i)(2). *Id.*

New paragraph (i)(5) as proposed in the November 2021 NOPR would provide the means of calculating the estimated annual operating cost corresponding to the energy consumption of a conventional cooking top, including any conventional cooking top component of a combined cooking product. *Id.* The result would be rounded to the nearest dollar per year. *Id.*

New paragraph (i)(6) as proposed in the November 2021 NOPR would allow the definition of other useful measures of energy consumption for conventional cooking tops that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix I1. *Id.*

DOE requested comment on its proposed provisions for measuring annual energy consumption and estimated annual cost. *Id.*

DOE did not receive any comments regarding its proposed provisions for measuring annual energy consumption and estimated annual cost.

In this final rule, DOE finalizes, consistent with the November 2021 NOPR, its proposed provisions for measuring annual energy consumption and estimated annual cost.

K. Alternative Proposals

In the November 2021 NOPR, DOE stated that it was aware of alternative approaches to the proposed cooking top test procedure and listed alternative approaches that were being considered

by stakeholders. 86 FR 60974, 60996. DOE added that it could consider adopting these alternative proposals if sufficient data were available to evaluate whether such test procedures are reasonably designed to produce test results which measure energy use of conventional cooking tops during a representative average use cycle or period of use and are not unduly burdensome to conduct. *Id.* (*See* 42 U.S.C. 6293(b)(3)) In this final rule, DOE is not adopting any of the alternative proposals.

1. Replacing the Simmering Test With a Simmering Usage Factor

In the November 2021 NOPR, DOE considered an approach to simplify the test procedure such that it requires only a single test per cooking zone. 86 FR 60974, 60997. This test could entail a simple heat-up test at the maximum power setting until the water temperature reaches a threshold temperature, such as 90 °C or the target turndown temperature. A simmering usage factor could then be applied to the measured energy use to scale the energy of the heat-up only test to a value that is representative of typical consumer usage including a simmering phase.

In the November 2021 NOPR, DOE presented an initial analysis of its test data suggesting that for electric cooking tops, the simmering energy may be a consistent fraction of the heat-up energy for each heating technology type. *Id.* However, for gas cooking tops, the potential simmering usage factor is more variable by individual cooking top and cooking zone.

DOE noted that if it were to adopt a test procedure that uses a simmering usage factor, the usage factor would need to be based on test data and would need to be representative of a tested simmering period on multiple types of products. *Id.* DOE tentatively determined in the November 2021 NOPR, based on the available data, that no such single simmering usage factor by heating technology can be defined, and did not propose to pursue this approach. *Id.*

DOE requested data on the representativeness of a simmering usage factor across technology types. *Id.*

The Joint Commenters commented in support of DOE's proposal to include a simmering test for electric and gas cooking top test procedures, stating that it is representative of how consumers will be using the products. (Joint Commenters, No. 11 at p. 3)

The Joint Commenters agreed with DOE's tentative determination that the use of a representative simmer usage factor to determine simmering energy would be difficult to define due to the variability of cooking tops and cooking zones, stating that a simmering usage factor would not accomplish the same goals as a simmering test. (Joint Commenters, No. 11 at pp. 3–4) The Joint Commenters commented that the inclusion of a simmering test may change the relative ranking of products compared to a heat-up only test. (Joint Commenters, No. 11 at p. 4) The Joint Commenters commented that if a usage factor were applied instead of running a simmering test, a consistent factor would be used for each technology type to scale up the energy consumption value. (*Id.*) The Joint Commenters stated this would fail to reflect differences in simmering energy between different models of the same technology type. (*Id.*)

NEEA commented in support of DOE's proposal to proceed with a test procedure that includes a simmering portion rather than applying a simmering usage factor, stating that simmer energy cannot be accurately estimated through the application of a universal usage factor. (NEEA, No. 15 at p. 2) NEEA commented that a Food Service Technology Center report illustrated that simmer rates vary across different appliances and do not necessarily correlate with input rate or boil efficiency. (*Id.*) NEEA commented that attempting to apply a universal usage factor would oversimplify and misrepresent the range of simmering energies that cooking appliances might exhibit. (*Id.*) NEEA commented that any attempt to simplify the process of collecting simmering energy data would only be able to occur after a rigorous sample of simmering energy data indicates a clear relationship. (*Id.*)

The CA IOUs commented in support of DOE's decision to use an actual simmering test rather than a simmering usage factor. (CA IOUs, No. 14 at p. 7) The CA IOUs commented that it is unlikely that a single simmering usage factor would accurately apply to all cooking tops. (*Id.*)

AHAM commented that DOE's tentative determination that a single simmering usage factor by heating technology cannot be defined was based on only minimal evaluation. (AHAM, No. 12 at p. 16) AHAM commented that it is collecting data to determine a simmering usage factor and stated that DOE should wait until its data is available before it concludes that no single simmering usage factor by heating technology can be defined. (*Id.*) AHAM commented that a single simmering usage factor may or may not properly encompass variation but stated that other techniques may be useful such as multivariable extrapolation based on factors like cooking zone size, cooking zone rating and/or technology types. (*Id.*) AHAM commented that the simmering portion of the test introduces the most variation and adds the most burden and stated that a calculation factor would help reduce variation and burden. (*Id.*) AHAM commented that DOE should consider a simmering usage factor in order to meet EPCA's requirements given the concerns with variation and test burden. (*Id.*) AHAM commented that it agrees that it is unlikely that a single factor could be applied across different technologies and stated that this is why its testing is investigating other techniques as listed above. (*Id.*) AHAM commented that developing a multivariable extrapolation would involve testing of multiple technologies with cooking zones of different sizes and ratings, and then creating an equation to estimate simmering energy consumption based on data for each technology, size, and rating. (*Id.*) AHAM commented that the measured boiling energy consumption could then be added to the calculated simmering energy consumption for a final result. (*Id.*) AHAM commented that its test plan includes these additional techniques, and that DOE should wait for those results before it can reach a conclusion that a calculation methodology is not representative. (*Id.*)

AHAM commented that the use of a simmering usage factor would reduce test burden and stated that a simmering usage factor would allow for a 6-minute test for each cooking zone without a turndown, compared to what AHAM calculated as 475 minutes (7.9 hours) for the proposed test procedure (using coil and induction cooking top testing as an example). (AHAM, No. 12 at pp. 16–17) AHAM presented a table supporting this value of 475 minutes per cooking zone to conduct the proposed test procedure based on the summation of 300 seconds (5 minutes) of overshoot testing; 2,100 seconds of pre-selection testing (a 10-minute test run on 3–4 settings, for a total of around 35 minutes); 3,000 seconds of simmering testing (25 minutes each for the minimum-above threshold and maximum-below threshold settings); 1,500 seconds (25 minutes) of likely additional simmering testing due to various issues; and 21,600 seconds of cooldown time (60 minutes between each test, for a total of 6 cooldown periods). (AHAM, No. 12 at p. 17)

DOE has determined through its testing that a test procedure including a simmering test produces the most representative results for the energy

consumption of each conventional cooking top basic model and is not unduly burdensome to conduct. Use of a simmering usage factor in lieu of a simmering test, as suggested by AHAM, relies upon the inaccurate assumption that the energy use profile of every cooking top is similar to that of other cooking tops throughout a representative usage cycle, which includes both a heat-up and a simmering phase. However, these profiles differ according to the specific design and performance characteristics among various models (*e.g.,* electric heating technology, shape and size of the electric coil, grate material and geometry, gas burner flame turndown behavior and relationship to the grate, *etc.*). DOE has observed throughout its testing programs that the ratio of energy use during the simmering phase to energy use during the heat-up phase varies between cooking tops and even between heating elements or burners on a single cooking top. The use of a single simmering usage factor would impede the ability for the test procedure to differentiate between various energy-saving simmering strategies among different conventional cooking tops. The use of a single simmering factor or other similar analytic approach could disincentivize manufacturers from innovating new energy-saving simmering strategies. Because the use of a simmering usage factor would not capture the differences between various simmering strategies, it would also, therefore, produce results that are not representative of the consumer usage of each conventional cooking top basic model as compared to a test that includes a simmering phase.

Regarding AHAM's comment on test burden, DOE agrees with AHAM that a test procedure that includes only a heat-up phase would take less time to conduct. However, as discussed, this type of test would not produce results that are representative of consumer usage. Further, AHAM's calculation of 7.9 hours per cooking zone for the test procedure proposed in the November 2021 NOPR overcounts the amount of cooling periods needed. A cooldown period is needed only before an overshoot or simmering test. It is not needed before or in-between the pre-selection tests, as discussed in section III.D.2.d of this document. Using the values provided by AHAM while removing the unnecessary cooling periods would result in a total time of 295 minutes, or 4.9 hours,[78] of testing per cooking zone (except for the last cooking zone under test, which would require only 3.9 hours of testing).[79] DOE has determined that the conduct and duration of the test procedure established in this final rule is not unduly burdensome.

For these reasons, consistent with the November 2021 NOPR, DOE is not adopting a test methodology that includes the use of a simmering usage factor. To the extent that commenters in the future may wish to have DOE evaluate methodology for a conventional cooking top test procedure without a simmering test, they should submit data and analysis on the record for DOE to consider. In order to ensure that the test method is representative of consumer usage, any alternative method would need to provide an estimated energy consumption specific to the conventional cooking top model under test, rather than yielding an approximate value by means of a generic approach that applies equally for all models. Any such alternative method would need to produce equivalent estimated energy consumption results and associated product rankings as the test procedure adopted in this final rule.

2. Changing the Setting Used To Calculate Simmering Energy

IEC 60350–2:2021 defines the simmering setting according to the temperature characteristics of the water load at that power setting. In the November 2021 NOPR, DOE considered alternatively defining the simmering setting according to the power supplied at each power setting. 86 FR 60974, 60997. For instance, DOE considered defining the simmering setting as the lowest power setting that is at or above 25 percent of maximum power (or maximum heat input rate for gas cooking tops). *Id.*

To the extent that consumers choose a simmering power setting based on knob position (or setting number) rather than by directly or indirectly monitoring the temperature variation of the food or water in the cookware, this potential alternative could yield more representative results than the current proposal. DOE previously established a power-level-based test procedure as part of the October 2012 Final Rule. 77 FR 65942.

DOE requested data on the representativeness of a simmering setting based on a percentage of the maximum power setting. 86 FR 60974, 60997.

The CA IOUs commented that they agree with using the temperature-based test conditions rather than choosing a simmer power setting based on knob position and stated that this results in more comparable and representative results across different units. (CA IOUs, No. 14 at p. 7)

DOE did not receive any data on the representativeness of a simmering setting based on a percentage of the maximum power setting. For the reasons discussed in the November 2021 NOPR, in this final rule, DOE is not defining the simmering setting based on the knob position or the power level of the potential simmering setting.

3. Industry Test Procedures

DOE is aware that AHAM is developing test procedures for electric and gas cooking tops as part of its Task Force efforts. Although AHAM's test procedures had not been finalized at the time of publication of the November 2021 NOPR, the provisions in the draft test procedures as of September 1, 2021, were substantially the same as those specified in the November 2021 NOPR. DOE also stated in the November 2021 NOPR that if AHAM were to finalize its test procedures before DOE publishes a test procedure final rule for conventional cooking tops, DOE could consider incorporating the AHAM procedure by reference, instead of using the language adopted in this final rule. 86 FR 60974, 60997.

AHAM has not finalized its test procedures as of the publication of this final rule.

AHAM commented that since the August 2020 Final Rule, it has been in the process of developing test procedures for electric and gas cooking tops that decrease variation and test burden. (AHAM, No. 12 at pp. 9–10) AHAM commented that it has been working on a fast track in recognition that DOE is interested in moving this test forward and stated that it has been sharing its insights with DOE throughout the process and plans to share raw data when it becomes available. (AHAM, No. 12 at p. 10) AHAM commented that it is in the process of conducting testing at a third-party laboratory in two separate

[78] 295 minutes calculated as 5 minutes of overshoot testing + 35 minutes of pre-selection testing + 60 minutes of cooldown + 25 minutes of simmering testing for the minimum-above-threshold setting + 60 minutes of cooldown + 25 minutes of simmering testing for the maximum-below-threshold setting + 60 minutes of cooldown before testing the next cooking zone (except for the last cooking zone under test) + a buffer of 25 minutes to account for potential additional simmering testing = 295 minutes (or 235 for the last cooking zone under test).

[79] For a unit with four cooking zones, this is a total of 18.7 hours of testing. This duration is similar to the November 2021 NOPR value of 17.5 hours of testing. For a unit with six cooking zones, this is a total of 28.5 hours of testing. See section III.N of this document for further discussion of test procedure costs.

locations to assess possible test modifications. (*Id.*) AHAM commented that its data may not provide a complete picture of reproducibility but stated that it will be relevant to DOE's proposed test procedure amendments. (*Id.*) AHAM commented that the completion of this testing was a central reason why AHAM requested a comment period extension on the November 2021 NOPR to March 31, 2022. (*Id.*) AHAM commented that it was not able to meet that deadline but stated that it plans to file supplemental comments on the proposed test procedure with DOE, stating that it hopes the testing will be complete by September 2022. (*Id.*) AHAM commented that its members are also considering a scaled-down test plan whereby AHAM could complete testing by July 2022, and that DOE will receive an update if the test plan is revised. (*Id.*)

AHAM commented that the third-party laboratory conducting AHAM's testing has faced numerous obstacles, including difficulty in procuring adequate test vessels, difficulty in executing the technical procedure due to vagueness, logistical issues at the test laboratory, and COVID–19 outbreaks at the testing facility, resulting in closures. (AHAM, No. 12 at p. 10) AHAM commented that the certified test laboratory found certain provisions of the test procedure vague, stating that this caused delays. (*Id.*) AHAM commented that, according to its interpretation, even DOE had to disregard some of the data collected because of the complicated test setup involved, stating that 25 percent of the results were marked ''n/a'' in the December 2021 NODA. (AHAM, No. 12 at pp. 10–11) AHAM commented that DOE should allow time for AHAM's testing to be completed in order to ensure DOE defines a test that is accurate, repeatable, reproducible, representative, and not unduly burdensome to conduct. (AHAM, No. 12 at p. 11)

AHAM commented that one of the reasons for this delay in its test data collection was that the laboratory experienced longer cooldown periods for electric units than anticipated. (AHAM, No. 12 at p. 10) AHAM commented that the test laboratory, which AHAM stated has considerable experience running DOE test procedures, found that testing of a single heating element is unlikely to be completed in a single 8-hour shift for certain technologies. (*Id.*) AHAM commented that this is an indication that the procedure is unduly burdensome to complete, as the test requires constant technician interaction and monitoring. (*Id.*)

DOE appreciates AHAM's efforts to develop test procedures for electric and gas cooking tops and notes that it has not yet received any data from AHAM on this issue. DOE encourages AHAM to send any data when it becomes available. DOE notes that it has provided opportunity for stakeholders to provide test results, including two extensions of the comment period on the November 2021 NOPR (see section III.A of this document). As discussed in this final rule, DOE has determined that the established test procedure is reasonably designed to produce test results which measure energy use of conventional cooking tops during a representative period of use and is not unduly burdensome to conduct. DOE continues to welcome AHAM's data and will consider it in the ongoing energy conservation standards rulemaking.

In response to AHAM's assumption that the ''n/a'' notation on the 2021 Round Robin data presented in the December 2021 NODA represented disregarded test data, DOE clarifies that these ''n/a'' notations represent units that were not tested at particular laboratories (''not applicable''). As stated in this document and in the December 2021 NODA, each unit was tested at 3 laboratories. 86 FR 71406, 71407. Due to a time constraint, one of the units in the test sample was not tested at Laboratory B, but was instead tested at Laboratory E, resulting in the notation of ''n/a'' because that unit did not have test results for Laboratory B. *Id.* Similarly, the units that *were* tested at Laboratory B were not tested at Laboratory E, resulting in the notation of ''n/a'' for those tests too.

DOE interprets AHAM's comment regarding longer-than-anticipated cooldown periods for electric units to apply to units that AHAM's test laboratory has observed to take over 2 hours to return to ambient temperature. DOE notes that, in its experience, a cooldown is typically much shorter than 2 hours. Based on the experience of two of the laboratories that participated in the 2021 Round Robin, the cooldown of a unit typically ranges from 20 minutes to 1 hour. DOE reiterates that the test procedure allows active cooling of the unit under test, and that some effective strategies have included the use of a fan blowing air over a wet cloth laid on the cooking top surface to improve evaporative cooling and the use of a fan blowing air directly into the burner cavity. In response to AHAM's assertion that a single cooking zone is unlikely to be completed in a single 8-hour shift for certain technologies, DOE's testing experience indicates that the test procedure can be completed in under 5 hours on average per cooking zone for any technology.[80]

L. Representations

1. Sampling Plan

In the November 2021 NOPR, DOE proposed to maintain the sampling plan requirements for cooking products in 10 CFR 429.23(a), which specify that for each basic model of cooking product a sample of sufficient size shall be randomly selected and tested to ensure that any represented value for which consumers would favor lower values shall be greater than or equal to the higher of the mean of the sample or the upper 97.5 percent confidence limit of the true mean divided by 1.05. 86 FR 60974, 60997.

DOE sought comment on the proposed method for establishing a sampling plan. *Id.*

DOE did not receive any comments regarding the proposed method for establishing a sampling plan.[81]

In this final rule, DOE finalizes its proposed sampling plan, consistent with the November 2021 NOPR.

2. Convertible Cooking Appliances

DOE defines a convertible cooking appliance as any kitchen range and oven which is a household cooking appliance designed by the manufacturer to be changed in service from use with natural gas to use with LP-gas, and vice versa, by incorporating in the appliance convertible orifices for the main gas burners and a convertible gas pressure regulator. 10 CFR 430.2.

In the May 1978 Final Rule, DOE established a requirement for two estimated annual operating costs for convertible cooking appliances: one reflecting testing with natural gas and another reflecting testing with propane. 43 FR 20108, 20110. DOE allowed manufacturers to use the amount of energy consumed during the test with natural gas to determine the estimated annual operating cost of the appliance reflecting testing with propane. *Id.* DOE provided this allowance based on test data that showed that conventional cooking products tested with propane yielded slightly higher efficiencies than the same products tested with natural gas. *Id.*

In the version of 10 CFR 430.23 finalized in the December 2016 Final Rule, convertible cooking tops were

[80] See section III.K.1 for a detailed explanation of DOE's calculation of the estimated test time per cooking zone of 4.9 hours, based on AHAM's comments.

[81] See section III.F of this document for discussion of a comment from Samsung regarding certification and compliance tolerances for gas cooking tops.

required to be tested using both natural gas and propane, although the version of appendix I finalized in that same rule listed the test gas as natural gas or propane. 81 FR 91418, 91448. DOE does not require testing both natural gas and propane for any other convertible appliances.

In the November 2021 NOPR, DOE proposed to specify that all gas cooking tops be tested using the default test gas (*i.e.,* the appropriate test gas given the as-shipped configuration of the cooking top) and proposed not to require testing any convertible cooking top using both natural gas and propane. 86 FR 60974, 60998.

DOE further proposed to delete the definition of convertible cooking appliance in 10 CFR 430.2, since such distinction would no longer be needed and may cause confusion. *Id.*

DOE requested comment on its proposal to test all gas cooking tops using the default test gas, as defined by the as-shipped configuration of the unit. *Id.* DOE also requested comment on its proposal to delete the definition of convertible cooking appliance from 10 CFR 430.2. *Id.*

AHAM commented in support of DOE's proposal to test all gas cooking tops using the default test gas, as defined by the as-shipped configuration of the unit and stated that it understands this proposal to be consistent with test procedures for other product categories, such as clothes dryers. (AHAM, No. 12 at p. 17)

For the reasons discussed, DOE finalizes its proposal, consistent with the November 2021 NOPR, to test all gas cooking tops using the default test gas, as defined by the as-shipped configuration of the unit and to delete the definition of convertible cooking appliance from 10 CFR 430.2.

M. Reporting

In the November 2021 NOPR, DOE did not propose to require reporting of cooking top energy use until such time as compliance is required with a performance-based energy conservation standard, should such a standard be established. 86 FR 60974, 60998. DOE proposed to add an introductory note to new appendix I1 to that effect. *Id.*

DOE did not receive any comments regarding its proposed introductory note to new appendix I1.

In this final rule, DOE finalizes its introductory note to appendix I1, consistent with the November 2021 NOPR.

N. Test Procedure Costs

In this document, DOE establishes a new test procedure for conventional cooking tops in a new appendix I1. The test procedure adopts the latest version of the relevant industry standard with modifications to adapt the test method to gas cooking tops (including specifying gas supply tolerances), includes measurement of standby mode and off mode energy use, updates certain test conditions, and provides certain clarifying language. If manufacturers voluntarily choose to make representations regarding the energy efficiency of conventional cooking tops before such time as use of the test procedure becomes mandatory to demonstrate compliance with energy conservation standards, manufacturers would be required to test according to the DOE test procedure.

In the November 2021 NOPR, DOE initially determined that the proposed new appendix I1, if finalized, would result in added costs to conventional cooking top manufacturers, if manufacturers choose to make efficiency representations for the conventional cooking tops that they manufacture. 86 FR 60974, 60998. Additionally, manufacturers would incur testing costs if DOE were to establish a performance-based energy conservation standard for conventional cooking tops.

To estimate third-party laboratory costs in the November 2021 NOPR, DOE evaluated quotes from test laboratories on the price of conducting a similar conventional cooking top test procedure. *Id.* at 86 FR 60999. DOE then averaged these prices to arrive at an estimate of what the manufacturers would have to spend to test their product using a third-party test laboratory. *Id.* Using these quotes, DOE estimated that it would cost conventional cooking top manufacturers approximately $3,000 to conduct a single test on a conventional cooking top unit, if this test was conducted at a third-party laboratory test facility. *Id.*

To estimate in-house testing cost, DOE estimated in the November 2021 NOPR, based on its testing experience, that testing a single conventional cooking top unit to the proposed test procedure required approximately 17.5 hours of a technician's time. *Id.*

DOE requested comment on any aspect of the estimated initial testing costs detailed in the November 2021 NOPR. *Id.* DOE also requested comment on any aspect of the estimated recurring testing costs associated with conventional cooking tops detailed in the November 2021 NOPR. *Id.*

AHAM commented in response to the November 2021 NOPR that the cumulative regulatory burden associated with different energy conservation standards and test procedure rulemakings is potentially significant. (AHAM, No. 12 at p. 9) AHAM noted specifically that manufacturers of cooking products, at the time of writing, were in the position of responding to five open rulemakings with limited staff to do so. (*Id.*)

AHAM also commented that the third-party test laboratory that it is working with has updated its test cost quote to $483 per simmering test, for an estimated $3,900 per four-cooking zone cooking top. (AHAM, No. 12 at p. 11)

As discussed in detail in section III.K.1 of this document, AHAM commented that the proposed test procedure requires 7.9 hours per cooking zone to conduct. (AHAM, No. 12 at p. 17)

Were DOE to establish energy conservation standards for conventional cooking tops, manufacturers would be required to test according to the finalized test procedure. DOE recognizes the potential manufacturer burden of multiple simultaneous rulemakings and would evaluate the cumulative regulatory burden in future energy conservation standards rulemakings related to cooking products as provided by its established processes.[82]

In this final rule, DOE reviewed its third-party test laboratory costs and test time estimates, to provide the best estimate of the total cost to manufacturers if DOE were to implement performance-based standards. DOE is further updating its estimates to reflect the range of typical cooking tops on the market and is providing values for both a cooking top with four cooking zones and one with six cooking zones. In subsequent calculations, DOE used an average of the value for the cooking top with four cooking zones and the cooking top with six cooking zones, representative of the fact that DOE determined through a market analysis that cooking tops have an average of five cooking zones.

DOE has reviewed additional test quotes since the November 2021 NOPR, including the one submitted by AHAM in its comments, and has determined that it would cost conventional cooking top manufacturers approximately $3,200 to conduct a single test on a conventional cooking top unit with four cooking zones, if this test was conducted at a third-party laboratory test facility. The same test would cost conventional cooking top manufacturers approximately $5,000 on a conventional cooking top unit with six cooking zones.

[82] See 10 CFR part 430 subpart C appendix A section 13(g).

In the remainder of this document, DOE uses an average value of $4,100 per test.

As discussed in section III.K.1 of this document, DOE has updated its estimated test time per cooking zone to 4.9 hours, except for the last cooking zone under test which would require only 3.9 hours. As a result, DOE estimates that testing a single conventional cooking top unit to appendix I1 requires approximately 18.7 hours of a technician's time for four cooking zones and 28.5 hours for six cooking zones. In the remainder of this document, DOE uses an average value of 23.6 hours per test.

Based on data from the Bureau of Labor Statistics' (''BLS'') Occupational Employment and Wage Statistics, the mean hourly wage for mechanical engineering technologists and technicians is $30.47.[83] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percent that wages comprise the total compensation for an employee. DOE estimates that wages make up 70.5 percent of the total compensation for private industry employees.[84] Therefore, DOE estimates that the total hourly compensation (including all fringe benefits) of a technician performing the testing is $43.22.[85] Using these labor rates and the updated average time estimate of 23.6 hours per cooking top, DOE estimates that it would cost conventional cooking top manufacturers approximately $1,020 to conduct a single test on a conventional cooking top unit, if this test was conducted at an in-house test facility.

Using the assumptions discussed in this section, DOE estimates that it would cost conventional cooking top manufacturers approximately $2,040 per basic model, if tested at an in-house test facility and approximately $8,200 per basic model, if tested at a third-party laboratory test facility.

DOE also estimates that conventional cooking top manufacturers would need to purchase test vessels in accordance with new appendix I1. DOE estimates that each set of test vessels costs approximately $6,000.

[83] DOE used the mean hourly wage of the ''17–3027 Mechanical Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2021) to estimate the hourly wage rate of a technician assumed to perform this testing. See *www.bls.gov/oes/current/oes173027.htm.* Last accessed on April 4, 2022.

[84] DOE used the December 2021 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.3 percent of the total employee compensation. See *www.bls.gov/news.release/pdf/ecec.pdf.* Last accessed on April 4, 2022.

[85] $30.47 ÷ 0.705 = $43.22.

O. Compliance Date

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

As previously stated, no performance-based energy conservation standards are prescribed for conventional cooking tops. Manufacturers are not required to test according to the DOE test procedure unless manufacturers voluntarily choose to make representations as to the energy efficiency or energy use of a conventional cooking top. Were DOE to establish energy conservation standards for conventional cooking tops, manufacturers would be required to test according to the finalized test procedure at such time as compliance would be required with the established standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

The following sections detail DOE's FRFA for this test procedure rulemaking:

1. Descriptions of Reasons for Action

DOE is establishing test procedures for conventional cooking tops. Establishing test procedures for conventional cooking tops assists DOE in fulfilling its statutory deadline for amending energy conservation standards for cooking products that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Additionally, establishing test procedures for conventional cooking tops allows manufacturers to produce measurements of energy use that are representative of an average use cycle and uniform for all manufacturers.

2. Objectives of, and Legal Basis for, Rule

DOE has undertaken this rulemaking pursuant to 42 U.S.C. 6292(a)(10), which authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment, including the cooking products that are the subject of this rulemaking.

3. Description and Estimate of Small Entities Regulated

DOE has recently conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. The size standards are listed by North American Industry Classification System (''NAICS'') code as well as by industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing cooking tops is classified under NAICS 335220, ''major household appliance manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [86] (CCD), the Modernized Appliance Efficiency Database System [87] (MAEDbS), and the National Resources Canada database [88] (NRCan) to create a list of companies that import or otherwise manufacture the products covered by this final rule. Once DOE created a list of potential manufacturers, DOE used market research tools to determine whether any met the SBA's definition of a small entity—based on the total number of employees for each company including parent, subsidiary, and sister entities—and gather annual revenue estimates.

Based on DOE's analysis, DOE identified 43 companies potentially manufacturing cooking tops covered by this test procedure. DOE screened out companies that do not meet the small entity definition and, additionally, screened out companies that are largely or entirely foreign owned and operated. Of the 43 companies, 12 were identified as a small business. Of these 12 small businesses, seven were further identified—through a review of their websites and online documentation—to be original equipment manufacturers manufacturing covered cooking tops as opposed to rebranding covered cooking tops, integrating the covered cooking tops into some broader product offering, or producing cooking tops for commercial applications.

4. Description and Estimate of Compliance Requirements

Because there are currently no energy conservation standards for conventional cooking tops, DOE estimates that this test procedure would not require any manufacturer to incur any testing burden associated with the test procedure. DOE recognizes that energy conservation standards related to conventional cooking tops may be proposed or promulgated in the future and manufacturers would then be required to test all covered equipment in accordance with the test procedure once compliance with any standard is required. (*See* Docket No. EERE–2020–BT–STD–0013) Therefore, DOE is presenting the costs associated with testing equipment and procedure consistent with the requirements of the test procedure, as would be required to comply with any future energy conservation standards for conventional cooking tops.

DOE observed that a number of the identified small businesses known to produce conventional cooking tops did not have cooking top models reflected in the publicly available CCD, MAEDbS, and NRCan databases. DOE undertook a review of each small business's website in order to develop an approximate model count. DOE estimated that the seven small businesses produced a total of 223 basic models of covered cooking tops, for a range of five to 126 basic models and an average of approximately 32 models per small business.

DOE assumes that small businesses would contract with third party testing labs to test and certify their covered products. Given DOE's previously estimated cost of $8,200 to test and certify a single model, DOE estimates it will cost approximately $1,826,600 to test all identified models manufactured by small businesses for an average of approximately $261,228 per small business. DOE was able to identify annual revenue estimates for all small businesses. From these estimates, DOE determined that the estimated testing costs would represent less than 2 percent of estimated annual revenue for all but one small business—for which the cost is estimated to be somewhat over 7 percent of its estimated annual revenue.

In addition, DOE expects small manufacturers to redesign or introduce new models of cooking tops on the same three-year timeframe as the broader industry described previously. Using this redesign cycle timeframe and the test costs and model count estimates previously stated, DOE estimated that small businesses manufacturing conventional cooking tops would collectively incur approximately $609,533 in costs every year to test approximately 74 newly introduced or redesigned conventional cooking top models.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with this final rule.

6. Significant Alternatives to the Rule

DOE is required to review existing DOE test procedures for all covered products and equipment every 7 years. Additionally, DOE shall amend test procedures with respect to any covered product, if the Secretary determines that amended test procedures would more accurately produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product type during a representative average use cycle or period of use, while not being unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A)(i)) DOE has determined that the DOE test procedure for conventional cooking tops established by this final rule will produce test results that measure cooking top energy use during a representative average use cycle or period of use without being unduly burdensome to conduct.

In the November 2021 NOPR, DOE examined alternatives to the proposed test procedure, such as determining not to establish a performance-based test

[86] U.S. Department of Energy Compliance Certification Management System, available at: *www.regulations.doe.gov/ccms.*

[87] California Energy Commission's Modernized Appliance Efficiency Database System, available at: *https://cacertappliances.energy.ca.gov/Login.aspx.*

[88] Natural Resources Canada searchable product list, available at: *oee.nrcan.gc.ca/pml-lmp/.*

procedure for conventional cooking tops or establishing prescriptive-based test procedures for conventional cooking tops. DOE noted in the November 2021 NOPR that while not establishing performance-based test procedures or establishing prescriptive-based test procedures for conventional cooking tops would reduce the burden on small businesses, DOE must use test procedures to determine whether the products comply with relevant standards promulgated under EPCA. 86 FR 61001. Since establishing performance-based test procedures for conventional cooking tops is necessary prior to establishing performance-based standards for conventional cooking tops, and DOE is required under EPCA to evaluate energy conservation standards for conventional cooking products, including conventional cooking tops, DOE tentatively concluded in the November 2021 NOPR that establishing performance-based test procedures supports DOE's authority to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) DOE received no comments on its conclusions in the November 2021 NOPR and thus affirms its determination in this final rule that there are no better alternatives than the final test procedure to meet the agency's objectives to measure energy efficiency more accurately and to reduce burden on manufacturers.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) 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 conventional cooking tops 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 conventional cooking tops. (*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.

There is currently no performance-based energy conservation standard for conventional cooking tops, and the test procedure established by this final rule does not establish any reporting requirements at this time. Were certification data required for conventional cooking tops, DOE would consider such certification requirements and reporting for conventional cooking products under a separate rulemaking regarding appliance and equipment certification. DOE would address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

D. Review Under the National Environmental Policy Act of 1969

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

E. Review Under Executive Order 13132

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

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

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

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

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

I. Review Under Executive Order 12630

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

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

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

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

The new test procedure for conventional cooking tops adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: IEC 60350–2:2021, IEC 62301 First Edition, and IEC 62301 Second Edition. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following IEC standards:

IEC 60350–2, ''Household electric cooking appliances Part 2: Hobs–Methods for measuring performance'', Edition 2.1, 2021–05. This is an industry-accepted test procedure that measures conventional electric cooking top energy use, using a water heating approach. Specifically, the test procedure codified by this final rule references various sections of IEC 60350–2:2021 that address test setup, instrumentation, test conduct, and calculations.

IEC 62301, ''Household electrical appliances–Measurement of standby power'', first edition, June 2005 is an industry-accepted test procedure that measures standby power in household appliances. The test procedure codified by this final rule references various sections of IEC 62301 that address test setup, instrumentation, and test conduct applicable to units for which standby power varies cyclically (such as units with a display clock).

IEC 62301, ''Household electrical appliances–Measurement of standby power'', Second Edition, 2011–01 is an industry-accepted test procedure that measures standby power in household appliances. The test procedure codified by this final rule references various sections of IEC 62301 that address test setup, instrumentation, and test conduct for the units for which standby power does not vary cyclically.

Copies of IEC 60350–2:2021, and both editions of IEC 62301 may be purchased from the IEC webstore at *webstore.iec.ch,* or from the American National Standards Institute at 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *webstore.ansi.org.*

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 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 July 18, 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 July 19, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends 10 CFR part 430 as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.2 [Amended]

■ 2. Section 430.2 is amended by removing the definition for ''Convertible cooking appliance.''

■ 3. Section 430.3 is amended by:
■ a. Redesignating paragraphs (p)(3) through (9) as (p)(4) through (10);
■ b. Adding new paragraph (p)(3);
■ c. Revising newly redesignated paragraph (p)(6); and
■ d. In newly redesignated paragraph (p)(7);
■ i. Removing the text ''I'' and adding, in its place, the text ''I, I1''; and
■ ii. Removing the text ''J2'' and adding, in its place, the text ''J, J2''.

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(p) * * *

(3) IEC 60350–2, (''IEC 60350–2''), *Household electric cooking appliances Part 2: Hobs—Methods for measuring performance,* Edition 2.1, 2021–05; IBR approved for appendix I1 to subpart B.

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(6) IEC 62301, *Household electrical appliances—Measurement of standby power,* first edition, June 2005; IBR approved for appendices I, I1 to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraph (i) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(i) *Cooking products.* (1) Determine the standby power for microwave ovens, excluding any microwave oven component of a combined cooking product, according to section 3.2.3 of appendix I to this subpart. Round standby power to the nearest 0.1 watt.

(2)(i) Determine the integrated annual energy consumption of a conventional electric cooking top, including any conventional cooking top component of a combined cooking product, according to section 4.3.1 of appendix I1 to this subpart. Round the result to the nearest 1 kilowatt-hour (kWh) per year.

(ii) Determine the integrated annual energy consumption of a conventional gas cooking top, including any conventional cooking top component of a combined cooking product, according to section 4.3.2 of appendix I1 to this subpart. Round the result to the nearest 1 kilo-British thermal unit (kBtu) per year.

(3) Determine the total annual gas energy consumption of a conventional gas cooking top, including any conventional cooking top component of a combined cooking product, according to section 4.1.2.2.1 of appendix I1 to this subpart. Round the result to the nearest 1 kBtu per year.

(4)(i) Determine the total annual electrical energy consumption of a conventional electric cooking top, including any conventional cooking top component of a combined cooking product, as the integrated annual energy consumption of the conventional electric cooking top, as determined in paragraph (i)(2)(i) of this section.

(ii) Determine the total annual electrical energy consumption of a conventional gas cooking top, including any conventional cooking top component of a combined cooking product, as follows, rounded to the nearest 1 kWh per year:

$E_{TGE} = E_{AGE} + E_{TLP}$

Where:

E_{AGE} is the conventional gas cooking top annual active mode electrical energy consumption as defined in section 4.1.2.2.2 of appendix I1 to this subpart, and E_{TLP} is the combined low-power mode energy consumption as defined in section 4.1 of appendix I1 to this subpart.

(5) Determine the estimated annual operating cost corresponding to the energy consumption of a conventional cooking top, including any conventional

cooking top component of a combined cooking product, as follows, rounded to the nearest dollar per year:

$(E_{TGE} \times C_{KWH}) + (E_{TGG} \times C_{KBTU})$

Where:

E_{TGE} is the total annual electrical energy consumption for any electric energy usage, in kilowatt-hours (kWh) per year, as determined in accordance with paragraph (i)(4) of this section;

C_{KWH} is the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act;

E_{TGG} is the total annual gas energy consumption, in kBtu per year, as determined in accordance with paragraph (i)(3) of this section; and

C_{KBTU} is the representative average unit cost for natural gas or propane, in dollars per kBtu, as provided pursuant to section 323(b)(2) of the Act, for conventional gas cooking tops that operate with natural gas or with LP-gas, respectively.

(6) Other useful measures of energy consumption for conventional cooking tops shall be the measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix I1 to this subpart.

* * * * *

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Microwave Ovens

■ 5. Appendix I to subpart B of part 430 is amended by revising the appendix heading to read as set forth above.

■ 6. Appendix I1 to subpart B of part 430 is added to read as follows:

Appendix I1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Cooking Products

Note: Any representation related to energy consumption of conventional cooking tops, including the conventional cooking top component of combined cooking products, made after February 20, 2023 must be based upon results generated under this test procedure. Upon the compliance date(s) of any energy conservation standard(s) for conventional cooking tops, including the conventional cooking top component of combined cooking products, use of the applicable provisions of this test procedure to demonstrate compliance with the energy conservation standard is required.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire test standard for IEC 60350–2; IEC 62301 (First Edition); and IEC 62301 (Second Edition). However, only enumerated provisions of those standards are applicable to this appendix, as follows. If there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standards.

0.1 IEC 60350–2

(a) Section 5.1 as referenced in section 2.4.1 of this appendix;

(b) Section 5.3 as referenced in sections 2.7.1.1, 2.7.3.1, 2.7.3.3, 2.7.3.4, 2.7.4, and 2.7.5 of this appendix;

(c) Section 5.5 as referenced in section 2.5.1 of this appendix;

(d) Section 5.6.1 as referenced in section 2.6.1 of this appendix;

(e) Section 5.6.1.5 as referenced in section 3.1.1.2 of this appendix;

(f) Section 6.3 as referenced in section 3.1.1.1.1 of this appendix;

(g) Section 6.3.1 as referenced in section 3.1.1.1.1 of this appendix;

(h) Section 6.3.2 as referenced in section 3.1.1.1.1 of this appendix;

(i) Section 7.5.1 as referenced in section 2.6.2 of this appendix;

(j) Section 7.5.2 as referenced in section 3.1.4.4 of this appendix;

(k) Section 7.5.2.1 as referenced in sections 1 and 3.1.4.2 of this appendix;

(l) Section 7.5.2.2 as referenced in section 3.1.4.4 of this appendix;

(m) Section 7.5.4.1 as referenced in sections 1 and 3.1.4.5 of this appendix;

(n) Annex A as referenced in section 3.1.1.2 of this appendix;

(o) Annex B as referenced in sections 2.6.1 and 2.8.3 of this appendix; and

(p) Annex C as referenced in section 3.1.4.1 of this appendix.

0.2 IEC 62301 (First Edition)

(a) Paragraph 5.3 as referenced in section 3.2 of this appendix; and

(b) Paragraph 5.3.2 as referenced in section 3.2 of this appendix.

0.3 IEC 62301 (Second Edition)

(a) Paragraph 4.2 as referenced in section 2.4.2 of this appendix;

(b) Paragraph 4.3.2 as referenced in section 2.2.1.1.2 of this appendix;

(c) Paragraph 4.4 as referenced in section 2.7.1.2 of this appendix;

(d) Paragraph 5.1 as referenced in section 3.2 of this appendix; and

(e) Paragraph 5.3.2 as referenced in section 3.2 of this appendix.

1. Definitions

The following definitions apply to the test procedures in this appendix, including the test procedures incorporated by reference:

Active mode means a mode in which the product is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or electric inductive heating.

Built-in means the product is enclosed in surrounding cabinetry, walls, or other similar structures on at least three sides, and can be supported by surrounding cabinetry or the floor.

Combined cooking product means a household cooking appliance that combines a cooking product with other appliance functionality, which may or may not include another cooking product. Combined cooking products include the following products: conventional range, microwave/conventional cooking top, microwave/conventional oven, and microwave/conventional range.

Combined low-power mode means the aggregate of available modes other than active mode, but including the delay start mode portion of active mode.

Cooking area means an area on a conventional cooking top surface heated by an inducted magnetic field where cookware is placed for heating, where more than one cookware item can be used simultaneously and controlled separately from other cookware placed on the cooking area, and that may or may not include limitative markings.

Cooking top control means a part of the conventional cooking top used to adjust the power and the temperature of the cooking zone or cooking area for one cookware item.

Cooking zone means a part of a conventional cooking top surface that is either a single electric resistance heating element, multiple concentric sizes of electric resistance heating elements, an inductive heating element, or a gas surface unit that is defined by limitative markings on the surface of the cooking top and can be controlled independently of any other cooking area or cooking zone.

Cycle finished mode means a standby mode in which a conventional cooking top provides continuous status display following operation in active mode.

Drop-in means the product is supported by horizontal surface cabinetry.

Freestanding means the product is supported by the floor and is not specified in the manufacturer's instructions as able to be installed such that it is enclosed by surrounding cabinetry, walls, or other similar structures.

Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Infinite power settings means a cooking zone control without discrete power settings, which allows for

selection of any power setting up to the maximum power setting.

Maximum-below-threshold power setting means the power setting on a conventional cooking top that is the highest power setting that results in smoothened water temperature data that do not meet the evaluation criteria specified in Section 7.5.4.1 of IEC 60350–2.

Maximum power setting means the maximum possible power setting if only one cookware item is used on the cooking zone or cooking area of a conventional cooking top, including any optional power boosting features. For conventional electric cooking tops with multi-ring cooking zones or cooking areas, the maximum power setting is the maximum power corresponding to the concentric heating element with the largest diameter, which may correspond to a power setting which may include one or more of the smaller concentric heating elements. For conventional gas cooking tops with multi-ring cooking zones, the maximum power setting is the maximum heat input rate when the maximum number of rings of the cooking zone are ignited.

Minimum-above-threshold power setting means the power setting on a conventional cooking top that is the lowest power setting that results in smoothened water temperature data that meet the evaluation criteria specified in Section 7.5.4.1 of IEC 60350–2. This power setting is also referred to as the simmering setting.

Multi-ring cooking zone means a cooking zone on a conventional cooking top with multiple concentric sizes of electric resistance heating elements or gas burner rings.

Off mode means any mode in which a product is connected to a mains power source and is not providing any active mode or standby function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

Power setting means a setting on a cooking zone control that offers a gas flame, electric resistance heating, or electric inductive heating.

Simmering period means, for each cooking zone, the 20-minute period during the simmering test starting at time t_{90}.

Smoothened water temperature means the 40-second moving-average temperature as calculated in Section 7.5.4.1 of IEC 60350–2, rounded to the nearest 0.1 degree Celsius.

Specialty cooking zone means a warming plate, grill, griddle, or any cooking zone that is designed for use only with non-circular cookware, such as a bridge zone. Specialty cooking zones are not tested under this appendix.

Stable temperature means a temperature that does not vary by more than 1 °C over a 5-minute period.

Standard cubic foot of gas means the quantity of gas that occupies 1 cubic foot when saturated with water vapor at a temperature of 60 °F and a pressure of 14.73 pounds per square inch (30 inches of mercury or 101.6 kPa).

Standby mode means any mode in which a product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) Facilitation of the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Provision of continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that allows for regularly scheduled tasks and that operates on a continuous basis.

Target turndown temperature (Tc_{target}) means the temperature as calculated according to Section 7.5.2.1 of IEC 60350–2 and section 3.1.4.2 of this appendix, for each cooking zone.

Thermocouple means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

Time t_{90} means the first instant during the simmering test for each cooking zone at which the smoothened water temperature is greater than or equal to 90 °C.

Turndown temperature (T_c) means, for each cooking zone, the measured water temperature at the time at which the tester begins adjusting the cooking top controls to change the power setting.

2. Test Conditions and Instrumentation

2.1 *Installation.* Install the conventional cooking top or combined cooking product in accordance with the manufacturer's instructions. If the manufacturer's instructions specify that the product may be used in multiple installation conditions, install the product according to the built-in configuration. Completely assemble the product with all handles, knobs, guards, and similar components mounted in place. Position any electric resistance heaters, gas burners, and baffles in accordance with the manufacturer's instructions. If the product can communicate through a network (*e.g.,* Bluetooth® or internet connection), disable the network function, if it is possible to disable it by means provided in the manufacturer's user manual, for the duration of testing. If the network function cannot be disabled, or if means for disabling the function are not provided in the manufacturer's user manual, the product shall be tested in the factory default setting or in the as-shipped condition.

2.1.1 *Freestanding combined cooking product.* Install a freestanding combined cooking product with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above the product and 1 foot beyond both sides of the product, and with no side walls.

2.1.2 *Drop-in or built-in combined cooking product.* Install a drop-in or built-in combined cooking product in a test enclosure in accordance with manufacturer's instructions.

2.1.3 *Conventional cooking top.* Install a conventional cooking top with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above the product and 1 foot beyond both sides of the product.

2.2 *Energy supply.*

2.2.1 *Electrical supply.*

2.2.1.1 *Supply voltage.*

2.2.1.1.1 *Active mode supply voltage.* During active mode testing, maintain the electrical supply to the product at either 240 volts ±1 percent or 120 volts ±1 percent, according to the manufacturer's instructions, except for products which do not allow for a mains electrical supply. The actual voltage shall be maintained and recorded throughout the test. Instantaneous voltage fluctuations caused by the turning on or off of electrical components shall not be considered.

2.2.1.1.2 *Standby mode and off mode supply voltage.* During standby mode and off mode testing, maintain the electrical supply to the product at either 240 volts ±1 percent, or 120 volts ±1 percent, according to the manufacturer's instructions. Maintain the electrical supply voltage waveform specified in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, total harmonic content may be measured and recorded immediately before and after the test measurement period.

2.2.1.2 *Supply frequency.* Maintain the electrical supply frequency for all tests at 60 hertz ±1 percent.

2.2.2 *Gas supply.*

2.2.2.1 *Natural gas.* Maintain the natural gas pressure immediately ahead of all controls of the unit under test at 7 to 10 inches of water column, except as specified in section 3.1.3 of this appendix. The natural gas supplied should have a higher heating value (dry-basis) of approximately 1,025 Btu per standard cubic foot. Obtain the higher heating value on a dry basis of gas, H_n, in Btu per standard cubic foot, for the natural gas to be used in the test either from measurements made by the manufacturer conducting the test using equipment that meets the requirements described in section 2.7.2.2 of this appendix or by the use of bottled natural gas whose gross heating value is certified to be at least as accurate a value that meets the requirements in section 2.7.2.2 of this appendix.

2.2.2.2 *Propane.* Maintain the propane pressure immediately ahead of all controls of the unit under test at 11 to 13 inches of water column, except as specified in section 3.1.3 of this appendix. The propane supplied should have a higher heating value (dry-basis) of approximately 2,500 Btu per standard cubic foot. Obtain the higher heating value on a dry basis of gas, H_p, in Btu per standard cubic foot, for the propane to be used in the test either from measurements made by the manufacturer conducting the test using equipment that meets the requirements described in section 2.7.2.2 of this appendix, or by the use of bottled propane whose gross heating value is certified to be at least as accurate a value that meets the requirements described in section 2.7.2.2 of this appendix.

2.3 *Air circulation.* Maintain air circulation in the room sufficient to secure a reasonably uniform temperature distribution, but do not cause a direct draft on the unit under test.

2.4 *Ambient room test conditions.*

2.4.1 *Active mode ambient conditions.* During active mode testing, maintain the ambient room air pressure specified in Section 5.1 of IEC 60350–2, and maintain the ambient room air temperature at 25 ± 5 °C with a target temperature of 25 °C.

2.4.2 *Standby mode and off mode ambient conditions.* During standby mode and off mode testing, maintain the ambient room air temperature conditions specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition).

2.5 *Product temperature.*

2.5.1 *Product temperature stability.* Prior to any testing, the product must achieve a stable temperature meeting the ambient room air temperature specified in section 2.4 of this appendix. For all conventional cooking tops, forced cooling may be used to assist in reducing the temperature of the product between tests, as specified in Section 5.5 of IEC 60350–2. Forced cooling must not be used during the period of time used to assess temperature stability.

2.5.2 *Product temperature measurement.* Measure the product temperature in degrees Celsius using the equipment specified in section 2.7.3.3 of this appendix at the following locations.

2.5.2.1 Measure the product temperature at the center of the cooking zone under test for any gas burner adjustment in section 3.1.3 of this appendix and per-cooking zone energy consumption test in section 3.1.4 of this appendix, except that the product temperature measurement is not required for any potential simmering setting pre-selection test in section 3.1.4.3 of this appendix. For a conventional gas cooking top, measure the product temperature inside the burner body of the cooking zone under test, after temporarily removing any burner cap on that cooking zone.

2.5.2.2 Measure the temperature at the center of each cooking zone for the standby mode and off mode power test in section 3.2 of this appendix. For a conventional gas cooking top, measure the temperature inside the burner body of each cooking zone, after temporarily removing any burner cap on that cooking zone. Calculate the product temperature as the average of the temperatures at the center of each cooking zone.

2.6 *Test loads.*

2.6.1 *Test vessels.* The test vessel for active mode testing of each cooking zone must meet the specifications in Section 5.6.1 and Annex B of IEC 60350–2.

2.6.2 *Water load.* The water used to fill the test vessels for active mode testing must meet the specifications in Section 7.5.1 of IEC 60350–2. The water temperature at the start of each test, except for the gas burner adjustment in section 3.1.3 of this appendix and the potential simmering setting pre-selection test in section 3.1.4.3 of this appendix, must have an initial temperature equal to 25 ± 0.5 °C.

2.7 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.7.1 *Electrical measurements.*

2.7.1.1 *Active mode watt-hour meter.* The watt-hour meter for measuring the active mode electrical energy consumption must have a resolution as specified in Table 1 of Section 5.3 of IEC 60350–2. Measurements shall be made as specified in Table 2 of Section 5.3 of IEC 60350–2.

2.7.1.2 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power must meet the specifications in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition). If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, measure the crest factor, power factor, and maximum current ratio immediately before and after the test measurement period to determine whether these characteristics meet the specifications in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition).

2.7.2 *Gas measurements.*

2.7.2.1 *Gas meter.* The gas meter used for measuring gas consumption must have a resolution of 0.01 cubic foot or less and a maximum error no greater than 1 percent of the measured valued for any demand greater than 2.2 cubic feet per hour.

2.7.2.2 *Standard continuous flow calorimeter.* The maximum error of the basic calorimeter must be no greater than 0.2 percent of the actual heating value of the gas used in the test. The indicator readout must have a maximum error no greater than 0.5 percent of the measured value within the operating range and a resolution of 0.2 percent of the full-scale reading of the indicator instrument.

2.7.2.3 *Gas line temperature.* The incoming gas temperature must be measured at the gas meter. The instrument for measuring the gas line temperature shall have a maximum error no greater than ±2 °F over the operating range.

2.7.2.4 *Gas line pressure.* The incoming gas pressure must be measured at the gas meter. The instrument for measuring the gas line pressure must have a maximum error no greater than 0.1 inches of water column.

2.7.3 *Temperature measurements.*

2.7.3.1 *Active mode ambient room temperature.* The room temperature indicating system must meet the specifications in Table 1 of Section 5.3 of IEC 60350–2. Measurements shall be made as specified in Table 2 of Section 5.3 of IEC 60350–2.

2.7.3.2 *Standby mode and off mode ambient room temperature.* The room temperature indicating system must have an error no greater than ±1 °F (±0.6

°C) over the range 65° to 90 °F (18 °C to 32 °C).

2.7.3.3 *Product temperature.* The temperature indicating system must have an error no greater than ±1 °F (±0.6 °C) over the range 65° to 90 °F (18 °C to 32 °C). Measurements shall be made as specified in Table 2 of Section 5.3 of IEC 60350–2.

2.7.3.4 *Water temperature.* Measure the test vessel water temperature with a thermocouple that meets the specifications in Table 1 of Section 5.3 of IEC 60350–2. Measurements shall be made as specified in Table 2 of Section 5.3 of IEC 60350–2.

2.7.4 *Room air pressure.* The room air pressure indicating system must meet the specifications in Table 1 of Section 5.3 of IEC 60350–2.

2.7.5 *Water mass.* The scale used to measure the mass of the water load must meet the specifications in Table 1 of Section 5.3 of IEC 60350–2.

2.8 *Power settings.*

2.8.1 On a multi-ring cooking zone on a conventional gas cooking top, all power settings are considered, whether they ignite all rings of orifices or not.

2.8.2 On a multi-ring cooking zone on a conventional electric cooking top, only power settings corresponding to the concentric heating element with the largest diameter are considered, which may correspond to operation with one or more of the smaller concentric heating elements energized.

2.8.3 On a cooking zone with infinite power settings where the available range of rotation from maximum to minimum is more than 150 rotational degrees, evaluate power settings that are spaced by 10 rotational degrees. On a cooking zone with infinite power settings where the available range of rotation from maximum to minimum is less than or equal to 150 rotational degrees, evaluate power settings that are spaced by 5 rotational degrees, starting with the first position that meets the definition of a power setting, irrespective of how the knob is labeled. Polar coordinate paper, as provided in Annex B of IEC 60350–2 may be used to mark power settings.

3. Test Methods and Measurements

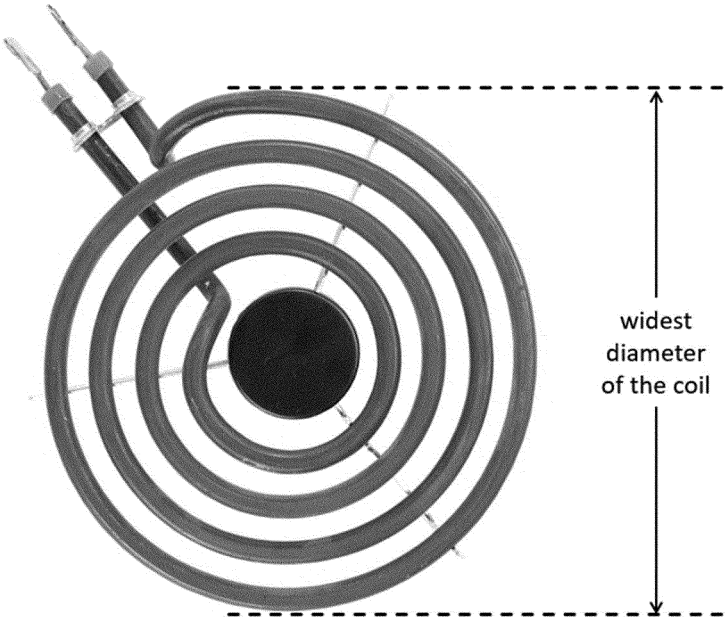
3.1 *Active mode.* Perform the following test methods for conventional cooking tops and the conventional cooking top component of a combined cooking product.

3.1.1 *Test vessel and water load selection.*

3.1.1.1 *Conventional electric cooking tops.*

3.1.1.1.1 For cooking zones, measure the size of each cooking zone as specified in Section 6.3.2 of IEC 60350–2, not including any specialty cooking zones as defined in section 1 of this appendix. For circular cooking zones on smooth cooking tops, the cooking zone size is determined using the outer diameter of the printed marking, as specified in Section 6.3 of IEC 60350–2. For open coil cooking zones, the cooking zone size is determined using the widest diameter of the coil, see Figure 3.1.1.1. For non-circular cooking zones, the cooking zone size is determined by the measurement of the shorter side or minor axis. For cooking areas, determine the number of cooking zones as specified in Section 6.3.1 of IEC 60350–2.

Figure 3.1.1.1 Evaluation of the Size of a Coil Cooking Zone



3.1.1.1.2 Determine the test vessel diameter in millimeters (mm) and water load mass in grams (g) for each measured cooking zone. For cooking zones, test vessel selection is based on cooking zone size as specified in Table 3 in Section 5.6.1.5 of IEC 60350–2. For cooking areas, test vessel selection is based on the number of cooking zones as specified in Annex A of IEC 60350–2. If a selected test vessel (including its lid) cannot be centered on the cooking zone due to interference with a structural component of the cooking top, the test vessel with the largest diameter that can be centered on the cooking zone shall be used. The

allowable tolerance on the water load weight is ±0.5 g.

3.1.1.2 *Conventional gas cooking tops.*

3.1.1.2.1 Record the nominal heat input rate for each cooking zone, not including any specialty cooking zones as defined in section 1 of this appendix.

3.1.1.2.2 Determine the test vessel diameter in mm and water load mass in g for each measured cooking zone according to Table 3.1 of this appendix. If a selected test vessel cannot be centered on the cooking zone due to interference with a structural component of the cooking top, the test vessel with the largest diameter that can be centered on the cooking zone shall be used. The allowable tolerance on the water load weight is ±0.5 g.

TABLE 3.1—TEST VESSEL SELECTION FOR CONVENTIONAL GAS COOKING TOPS

Nominal gas burner input rate (Btu/h)		Test vessel diameter	Water load mass
Minimum (<)	Maximum (≤)	(mm)	(g)
	5,600	210	2,050
5,600	8,050	240	2,700
8,050	14,300	270	3,420
14,300	.....	300	4,240

3.1.2 *Unit Preparation.* Before the first measurement is taken, all cooking zones must be operated simultaneously for at least 10 minutes at maximum power. This step shall be conducted once per product.

3.1.3 *Gas burner adjustment.* Prior to active mode testing of each tested burner of a conventional gas cooking top, the burner heat input rate must be adjusted, if necessary, to within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. Prior to ignition and any adjustment of the burner heat input rate, the conventional cooking top must achieve the product temperature specified in section 2.5 of this appendix. Ignite and operate the gas burner under test with the test vessel and water mass specified in section 3.1.1 of this appendix. Measure the heat input rate of the gas burner under test starting 5 minutes after ignition. If the measured input rate of the gas burner under test is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer, no adjustment of the heat input rate shall be made.

3.1.3.1 *Conventional gas cooking tops with an adjustable internal pressure regulator.* If the measured heat input rate of the burner under test is not within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer, adjust the product's internal pressure regulator such that the heat input rate of the burner under test is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. Adjust the burner with sufficient air flow to prevent a yellow flame or a flame with yellow tips. Complete section 3.1.4 of this appendix while maintaining the same gas pressure regulator adjustment.

3.1.3.2 *Conventional gas cooking tops with a non-adjustable internal pressure regulator or without an internal pressure regulator.* If the measured heat input rate of the burner under test is not within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer, remove the product's internal pressure regulator, or block it in the open position, and initially maintain the gas pressure ahead of all controls of the unit under test approximately equal to the manufacturer's recommended manifold pressure. Adjust the gas supply pressure such that the heat input rate of the burner under test is within 2 percent of the nominal heat input rate of the burner as specified by the manufacturer. Adjust the burner with sufficient air flow to prevent a yellow flame or a flame with yellow tips. Complete section 3.1.4 of this appendix while maintaining the same gas pressure regulator adjustment.

3.1.4 *Per-cooking zone energy consumption test.* Establish the test conditions set forth in section 2 of this appendix. Turn off the gas flow to the conventional oven(s), if so equipped. The product temperature must meet the specifications in section 2.5 of this appendix.

3.1.4.1 *Test vessel placement.* Position the test vessel with water load for the cooking zone under test, selected and prepared as specified in section 3.1.1 of this appendix, in the center of the cooking zone, and as specified in Annex C to IEC 60350–2.

3.1.4.2 *Overshoot test.* Use the test methods set forth in Section 7.5.2.1 of IEC 60350–2 to determine the target turndown temperature for each cooking zone, $T_{C_{target}}$, in degrees Celsius, as follows.

$$T_{C_{target}} = 93\ °C - (T_{max} - T_{70})$$

Where:

T_{max} is highest recorded temperature value, in degrees Celsius; and

T_{70} is the average recorded temperature between the time 10 seconds before the power is turned off and the time 10 seconds after the power is turned off.

If T_{70} is within the tolerance of 70 ± 0.5 °C, the target turndown temperature is the highest of 80 °C and the calculated $T_{C_{target}}$, rounded to the nearest integer. If T_{70} is outside of the tolerance, the overshoot test is considered invalid and must be repeated after allowing the product to return to ambient conditions.

3.1.4.3 *Potential simmering setting pre-selection test.* The potential simmering setting for each cooking zone may be determined using the potential simmering setting pre-selecting test. If a potential simmering setting is already known, it may be used instead of completing sections 3.1.4.3.1 through 3.1.4.3.4 of this appendix.

3.1.4.3.1 Use the test vessel with water load for the cooking zone under test, selected, prepared, and positioned as specified in sections 3.1.1 and 3.1.4.1 of this appendix. The temperature of the conventional cooking top is not required to meet the specification for the product temperature in section 2.5 of this appendix for the potential simmering setting pre-selection test. Operate the cooking zone under test with the lowest available power setting. Measure the energy consumption for 10 minutes ±2 seconds.

3.1.4.3.2 Calculate the power density of the power setting, j, on a conventional electric cooking top, Qe_j, in watts per square centimeter, as:

$$Qe_j = \frac{6 \times E_j}{a}$$

Where:

a = the surface area of the test vessel bottom, in square centimeters; and

E_j = the electrical energy consumption during the 10-minute test, in Wh.

3.1.4.3.3 Calculate the power density of the power setting, j, on a

conventional gas cooking top, Qg_j, in Btu/h per square centimeter, as:

$$Qg_j = \frac{6 \times \left(V_j \times CF \times H + Ee_j \times K_e\right)}{a}$$

Where:

a = the surface area of the test vessel bottom, in square centimeters;

V_j = the volume of gas consumed during the 10-minute test, in cubic feet;

CF = the gas correction factor to standard temperature and pressure, as calculated in section 4.1.1.2.1 of this appendix;

H = either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.1 and 2.2.2.2 of this appendix, in Btu per standard cubic foot of gas;

Ee_j = the electrical energy consumption of the conventional gas cooking top during the 10-minute test, in Wh; and

K_e = 3.412 Btu/Wh, conversion factor of watt-hours to Btu.

3.1.4.3.4 Repeat the measurement for each successively higher power setting until Qe_j exceeds 0.8 W/cm² for conventional electric cooking tops or Qg_j exceeds 4.0 Btu/h·cm² for conventional gas cooking tops.

For conventional cooking tops with rotating knobs for selecting the power setting, the selection knob shall be turned to the maximum power setting in between each test, to avoid hysteresis. The selection knob shall be turned in the direction from higher power to lower power to select the power setting for the test. If the appropriate power setting is passed, the selection knob shall be turned to the maximum power setting again before repeating the power setting selection.

Of the last two power settings tested, the potential simmering setting is the power setting that produces a power density closest to 0.8 W/cm² for conventional electric cooking tops or 4.0 Btu/h·cm² for conventional gas cooking tops. The closest power density may be higher or lower than the applicable threshold value.

3.1.4.4 *Simmering test.* The product temperature must meet the specifications in section 2.5 of this appendix at the start of each simmering test. For each cooking zone, conduct the test method specified in Section 7.5.2 of IEC 60350–2, using the potential simmering setting identified in section 3.1.4.3 of this appendix for the initial simmering setting used in Section 7.5.2.2 of IEC 60350–2.

For conventional cooking tops with rotating knobs for selecting the power setting, the selection knob shall be turned in the direction from higher power to lower power to select the potential simmering setting for the test, to avoid hysteresis. If the appropriate setting is passed, the test is considered invalid and must be repeated after allowing the product to return to ambient conditions.

3.1.4.5 *Evaluation of the simmering test.* Evaluate the test conducted under section 3.1.4.4 of this appendix as set forth in Section 7.5.4.1 of IEC 60350–2 according to Figure 3.1.4.5 of this appendix. If the measured turndown temperature, Tc, is not within –0.5 °C and +1 °C of the target turndown temperature, Tc_{target}, the test is considered invalid and must be repeated after allowing the product to return to ambient conditions.

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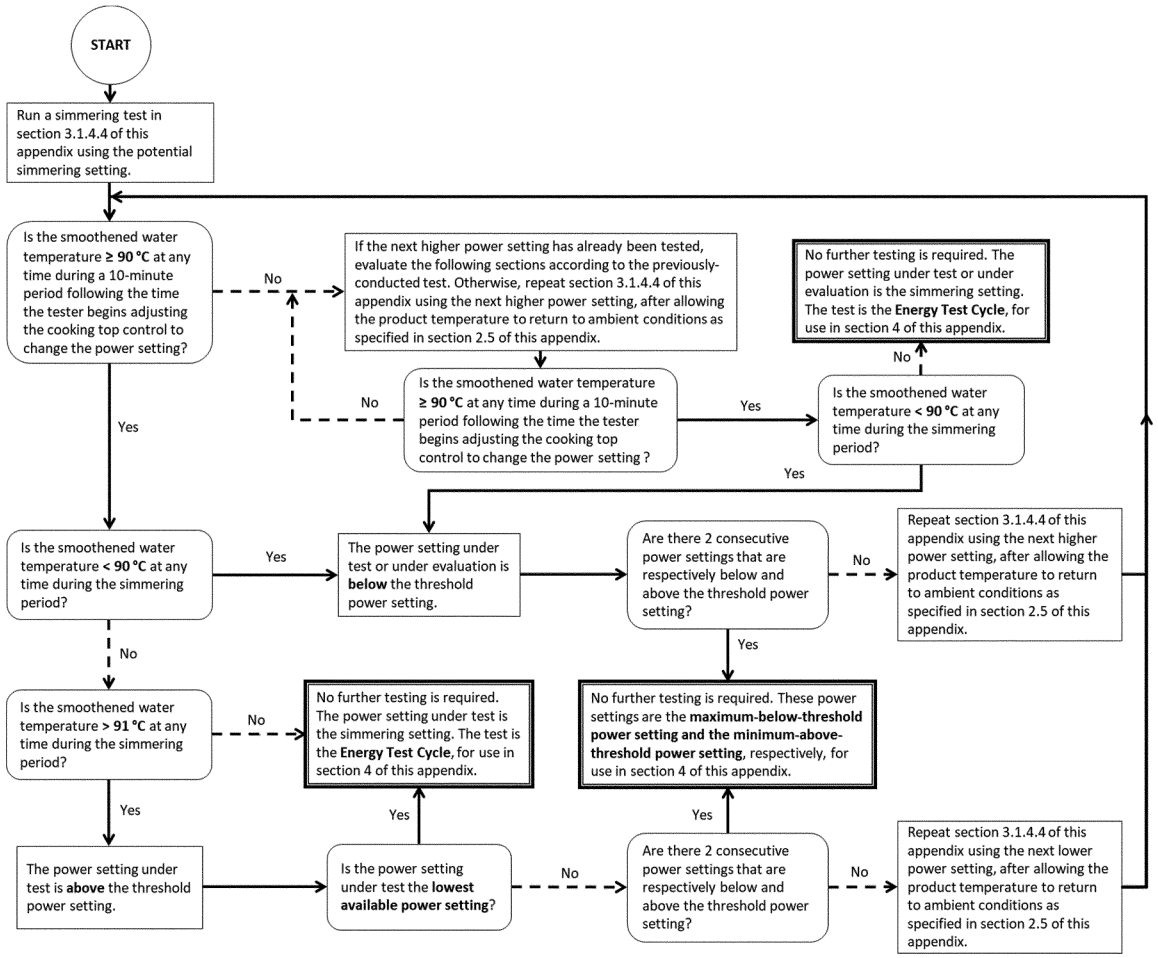
Figure 3.1.4.5 Evaluation of the Simmering Test



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3.2 *Standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2 of this appendix. For products that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition), allow sufficient time for the product to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.2.1 and 3.2.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of an initial stabilization period, as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition). After an additional 10-minute stabilization period, measure the power use for a single test period of 10 minutes +0/−2 seconds that starts when the clock time first reads 3:33. Use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition).

3.2.1 If the product has an inactive mode, as defined in section 1 of this appendix, measure the average inactive mode power, P_{IA}, in watts.

3.2.2 If the product has an off mode, as defined in section 1 of this appendix, measure the average off mode power, P_{OM}, in watts.

3.3 *Recorded values.*

3.3.1 *Active mode.*

3.3.1.1 For a conventional gas cooking top tested with natural gas, record the natural gas higher heating value in Btu per standard cubic foot, H_n, as determined in section 2.2.2.1 of this appendix for the natural gas supply. For a conventional gas cooking top tested with propane, record the propane higher heating value in Btu per standard cubic foot, H_p, as determined in section 2.2.2.2 of this appendix for the propane supply.

3.3.1.2 Record the test room temperature in degrees Celsius and relative air pressure in hectopascals (hPa) during each test.

3.3.1.3 *Per-cooking zone energy consumption test.*

3.3.1.3.1 Record the product temperature in degrees Celsius, T_P, prior to the start of each overshoot test or simmering test, as determined in section 2.5 of this appendix.

3.3.1.3.2 *Overshoot test.* For each cooking zone, record the initial temperature of the water in degrees Celsius, $T_{i\geqq}$ the average water temperature between the time 10 seconds before the power is turned off and the time 10 seconds after the power is turned off in degrees Celsius, T_{70}; the highest recorded water temperature in degrees Celsius, T_{max}; and the target turndown temperature in degrees Celsius, Tc_{target}.

3.3.1.3.3 *Simmering test.* For each cooking zone, record the temperature of the water throughout the test, in degrees Celsius, and the values in sections 3.3.1.3.3.1 through 3.3.1.3.3.7 of this appendix for the Energy Test Cycle, if an Energy Test Cycle is measured in section 3.1.4.5 of this appendix, otherwise for both the maximum-below-

threshold power setting and the minimum-above-threshold power setting. Because t_{90} may not be known until completion of the simmering test, water temperature, any electrical energy consumption, and any gas volumetric consumption measurements may be recorded for several minutes after the end of the simmering period to ensure that the full simmering period is recorded.

3.3.1.3.3.1 The power setting under test.

3.3.1.3.3.2 The initial temperature of the water, in degrees Celsius, T_i.

3.3.1.3.3.3 The time at which the tester begins adjusting the cooking top control to change the power setting, to the nearest second, t_c and the turndown temperature, in degrees Celsius, Tc.

3.3.1.3.3.4 The time at which the simmering period starts, to the nearest second, t_{90}.

3.3.1.3.3.5 The time at which the simmering period ends, to the nearest second, t_S and the smoothened water temperature at the end of the simmering period, in degrees Celsius, T_S.

3.3.1.3.3.6 For a conventional electric cooking top, the electrical energy consumption from the start of the test to t_S, E, in watt-hours.

3.3.1.3.3.7 For a conventional gas cooking top, the volume of gas consumed from the start of the test to t_S, V, in cubic feet of gas; and any electrical energy consumption of the cooking top from the start of the test to t_S, E_e, in watt-hours.

3.3.2 *Standby mode and off mode.* Make measurements as specified in section 3.2 of this appendix. If the product is capable of operating in inactive mode, as defined in section 1 of this appendix, record the average inactive mode power, P_{IA}, in watts as specified in section 3.2.1 of this appendix. If the product is capable of operating in off mode, as defined in section 1 of this appendix, record the average off mode power, P_{OM}, in watts as specified in section 3.2.2 of this appendix.

4. Calculation of Derived Results From Test Measurements

4.1. Active mode energy consumption of conventional cooking tops and any conventional cooking top component of a combined cooking product.

4.1.1 Per-cycle active mode energy consumption of a conventional cooking top and any conventional cooking top component of a combined cooking product.

4.1.1.1 Conventional electric cooking top per-cycle active mode energy consumption.

4.1.1.1.1 Conventional electric cooking top per-cooking zone normalized active mode energy consumption. For each cooking zone, calculate the per-cooking zone normalized active mode energy consumption of a conventional electric cooking top, E, in watt-hours, using the following equation:

$E = E_{ETC}$

for cooking zones where an Energy Test Cycle was measured in section 3.1.4.5 of this appendix, and

$$E = E_{MAT} - \frac{E_{MAT} - E_{MBT}}{T_{S,MAT} - T_{S,MBT}} \times (T_{S,MAT} - 90)$$

for cooking zones where a minimum-above-threshold cycle and a maximum-below-threshold cycle were measured in section 3.1.4.5 of this appendix.

Where:

E_{ETC} = the electrical energy consumption of the Energy Test Cycle from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

E_{MAT} = the electrical energy consumption of the minimum-above-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

E_{MBT} = the electrical energy consumption of the maximum-below-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

$T_{S,MAT}$ = the smoothened water temperature at the end of the minimum-above-threshold power setting test for the cooking zone, in degrees Celsius; and

$T_{S,MBT}$ = the smoothened water temperature at the end of the maximum-below-threshold power setting test for the cooking zone, in degrees Celsius.

4.1.1.1.2 Calculate the per-cycle active mode total energy consumption of a conventional electric cooking top, E_{CET}, in watt-hours, using the following equation:

$$E_{CET} = \frac{2853g}{n} \times \sum_{z=1}^{n} \frac{E_z}{m_z}$$

Where:

n = the total number of cooking zones tested on the conventional cooking top;

E_z = the normalized energy consumption representative of the Energy Test Cycle for each cooking zone, as calculated in section 4.1.1.1.1 of this appendix, in watt-hours;

m_z is the mass of water used for each cooking zone, in grams; and

2853 = the representative water load mass, in grams.

4.1.1.2 Conventional gas cooking top per-cycle active mode energy consumption.

4.1.1.2.1 Gas correction factor to standard temperature and pressure. Calculate the gas correction factor to standard temperature and pressure, which converts between standard cubic feet and measured cubic feet of gas for a given set of test conditions:

$$CF = \frac{(P_{gas} \times 0.0361) + P_{atm}}{P_{base}} \times \frac{T_{base}}{(T_{gas} + T_k)}$$

Where:

P_{gas} = the measured line gas gauge pressure, in inches of water column;

0.0361= the conversion factor from inches of water column to pounds per square inch;

P_{atm} = the measured atmospheric pressure, in pounds per square inch;

P_{base} = 14.73 pounds per square inch, the standard sea level air pressure;

T_{base} = 519.67 degrees Rankine (or 288.7 Kelvin);

T_{gas} = the measured line gas temperature, in degrees Fahrenheit (or degrees Celsius); and

T_k = the adder converting from degrees Fahrenheit to degrees Rankine, 459.7 (or from degrees Celsius to Kelvin, 273.16).

4.1.1.2.2 Conventional gas cooking top per-cooking zone normalized active mode gas consumption. For each cooking zone, calculate the per-cooking zone normalized active mode gas consumption of a conventional gas cooking top, V, in cubic feet, using the following equation:

$$V = V_{MAT} - \frac{V_{MAT} - V_{MBT}}{T_{S,MAT} - T_{S,MBT}} \times (T_{S,MAT} - 90)$$

for cooking zones where a minimum-above-threshold cycle and a maximum-below-threshold cycle were measured in section 3.1.4.5 of this appendix.

Where:

V_{ETC} = the gas consumption of the Energy Test Cycle from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in cubic feet;

V_{MAT} = the gas consumption of the minimum-above-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in cubic feet;

V_{MBT} = the gas consumption of the maximum-below-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in cubic feet;

$T_{S,MAT}$ = the smoothened water temperature at the end of the minimum-above-threshold power setting test for the cooking zone, in degrees Celsius; and

$T_{S,MBT}$ = the smoothened water temperature at the end of the maximum-below-threshold power setting test for the cooking zone, in degrees Celsius.

$V = V_{ETC}$

for cooking zones where an Energy Test Cycle was measured in section 3.1.4.5 of this appendix, and

$$E_e = E_{e,MAT} - \frac{E_{e,MAT} - E_{e,MBT}}{T_{S,MAT} - T_{S,MBT}} \times (T_{S,MAT} - 90)$$

for cooking zones where a minimum-above-threshold cycle and a maximum-below-threshold cycle were measured in section 3.1.4.5 of this appendix.

Where:

$E_{e,ETC}$ = the electrical energy consumption of the Energy Test Cycle from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

$E_{e,MAT}$ = the electrical energy consumption of the minimum-above-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

$E_{e,MBT}$ = the electrical energy consumption of the maximum-below-threshold power setting from the start of the test to the end of the test for the cooking zone, as determined in section 3.1.4.5 of this appendix, in watt-hours;

$T_{S,MAT}$ = the smoothened water temperature at the end of the minimum-above-threshold power setting test for the cooking zone, in degrees Celsius; and

$T_{S,MBT}$ = the smoothened water temperature at the end of the maximum-below-threshold power setting test for the cooking zone, in degrees Celsius.

4.1.1.2.3 Conventional gas cooking top per-cooking zone active mode normalized electrical energy consumption. For each cooking zone, calculate the per-cooking zone normalized active mode electrical energy consumption of a conventional gas cooking top, E_e, in watt-hours, using the following equation:

$E_e = E_{e,ETC}$

for cooking zones where an Energy Test Cycle was measured in section 3.1.4.5 of this appendix, and

$$E_{CGG} = \frac{2853g}{n} \times \sum_{z=1}^{n} \frac{V_z \times CF \times H}{m_z}$$

Where:

n, m_z, and 2853 are defined in section 4.1.1.1.2 of this appendix;

V_z = the normalized gas consumption representative of the Energy Test Cycle for each cooking zone, as calculated in section 4.1.1.2.2 of this appendix, in cubic feet; and

CF = the gas correction factor to standard temperature and pressure, as calculated in section 4.1.1.2.1 of this appendix

H = either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.1 and 2.2.2.2 of this appendix, expressed in Btu per standard cubic foot of gas.

4.1.1.2.4 Conventional gas cooking top per-cycle active mode gas energy consumption. Calculate the per-cycle active mode gas energy consumption of a conventional gas cooking top, E_{CGG}, in Btu, using the following equation:

$$E_{CGE} = \frac{2853g}{n} \times \sum_{z=1}^{n} \frac{E_{ez}}{m_z}$$

Where:

n, m_z, and 2853 are defined in section 4.1.1.1.2 of this appendix; and

E_{ez} = the normalized electrical energy consumption representative of the Energy Test Cycle for each cooking zone, as calculated in section 4.1.1.2.3 of this appendix, in watt-hours.

4.1.1.2.5 Conventional gas cooking top per-cycle active mode electrical energy consumption. Calculate the per-cycle active mode electrical energy consumption of a conventional gas cooking top, E_{CGE}, in watt-hours, using the following equation:

4.1.1.2.6 Conventional gas cooking top per-cycle active-mode total energy consumption. Calculate the per-cycle active mode total energy consumption of a conventional gas cooking top, E_{CGT}, in Btu, using the following equation:

$E_{CGT} = E_{CGG} + (E_{CGE} \times K_e)$

Where:

E_{CGG} = the per-cycle active mode gas energy consumption of a conventional gas cooking top as determined in section 4.1.1.2.4 of this appendix, in Btu;

E_{CGE} = the per-cycle active mode electrical energy consumption of a conventional gas cooking top as determined in section 4.1.1.2.5 of this appendix, in watt-hours; and

K_e = 3.412 Btu/Wh, conversion factor of watt-hours to Btu.

4.1.2 Annual active mode energy consumption of a conventional cooking top and any conventional cooking top component of a combined cooking product.

4.1.2.1 Conventional electric cooking top annual active mode energy consumption. Calculate the annual active mode total energy consumption of a conventional electric cooking top, E_{AET}, in kilowatt-hours per year, using the following equation:

$E_{AET} = E_{CET} \times K \times N_C$

Where:

E_{CET} = the conventional electric cooking top per-cycle active mode total energy consumption, as determined in section 4.1.1.1.2 of this appendix, in watt-hours;
K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours; and
N_C = 418 cooking cycles per year, the average number of cooking cycles per year normalized for duration of a cooking event estimated for conventional cooking tops.

4.1.2.2 Conventional gas cooking top annual active mode energy consumption.

4.1.2.2.1 Conventional gas cooking top annual active mode gas energy consumption. Calculate the annual active mode gas energy consumption of a conventional gas cooking top, E_{AGG}, in kBtu per year, using the following equation:

$$E_{AGG} = E_{CGG} \times K \times N_C$$

Where:

K and N_C are defined in section 4.1.2.1 of this appendix; and
E_{CGG} = the conventional gas cooking top per-cycle active mode gas energy consumption, as determined in section 4.1.1.2.4 of this appendix, in Btu.

4.1.2.2.2 Conventional gas cooking top annual active mode electrical energy consumption. Calculate the annual active mode electrical energy consumption of a conventional gas cooking top, E_{AGE}, in kilowatt-hours per year, using the following equation:

$$E_{AGE} = E_{CGE} \times K \times N_C$$

Where:

K and N_C are defined in section 4.1.2.1 of this appendix; and
E_{CGE} = the conventional gas cooking top per-cycle active mode electrical energy consumption, as determined in section 4.1.1.2.5 of this appendix, in watt-hours.

4.1.2.2.3 Conventional gas cooking top annual active mode total energy consumption. Calculate the annual active mode total energy consumption of a conventional gas cooking top, E_{AGT}, in kBtu per year, using the following equation:

$$E_{AGT} = E_{AGG} + (E_{AGE} \times K_e)$$

Where:

E_{AGG} = the conventional gas cooking top annual active mode gas energy consumption as determined in section 4.1.2.2.1 of this appendix, in kBtu per year;
E_{AGE} = the conventional gas cooking top annual active mode electrical energy consumption as determined in section 4.1.2.2.2 of this appendix, in kilowatt-hours per year; and
K_e is defined in section 4.1.1.2.6 of this appendix.

4.2 Annual combined low-power mode energy consumption of a conventional cooking top and any conventional cooking top component of a combined cooking product.

4.2.1 Conventional cooking top annual combined low-power mode energy consumption. Calculate the annual combined low-power mode energy consumption for a conventional cooking top, E_{TLP}, in kilowatt-hours per year, using the following equation:

$$E_{TLP} = [(P_{IA} \times F_{IA}) + (P_{OM} \times F_{OM})] \times K \times S_T$$

Where:

P_{IA} = inactive mode power, in watts, as measured in section 3.2.1 of this appendix;
P_{OM} = off mode power, in watts, as measured in section 3.2.2 of this appendix;
F_{IA} and F_{OM} are the portion of annual hours spent in inactive mode and off mode hours respectively, as defined in Table 4.2.1 of this appendix;
K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours; and
S_T = 8,544, total number of inactive mode and off mode hours per year for a conventional cooking top.

TABLE 4.2.1—ANNUAL HOUR MULTIPLIERS

Types of low-power mode(s) available	F_{IA}	F_{OM}
Both inactive and off mode	0.5	0.5
Inactive mode only	1	0
Off mode only	0	1

4.2.2 Conventional cooking top component of a combined cooking product annual combined low-power mode energy consumption. Calculate the annual combined low-power mode energy consumption for the conventional cooking top component of a combined cooking product, E_{TLP}, in kilowatt-hours per year, using the following equation:

$$E_{TLP} = [(P_{IA} \times F_{IA}) + (P_{OM} \times F_{OM})] \times K \times S_{TOT} \times H_C$$

Where:

P_{IA}, P_{OM}, F_{IA}, F_{OM}, and K are defined in section 4.2.1 of this appendix;
S_{TOT} = the total number of inactive mode and off mode hours per year for a combined cooking product, as defined in Table 4.2.2 of this appendix; and
H_C = the percentage of hours per year assigned to the conventional cooking top component of a combined cooking product, as defined in Table 4.2.2 of this appendix.

TABLE 4.2.2—COMBINED COOKING PRODUCT USAGE FACTORS

Type of combined cooking product	S_{TOT}	H_C
Cooking top and conventional oven (conventional range)	8,392	60
Cooking top and microwave oven	8,481	77
Cooking top, conventional oven, and microwave oven	8,329	51

4.3 Integrated annual energy consumption of a conventional cooking top and any conventional cooking top component of a combined cooking product.

4.3.1 Conventional electric cooking top integrated annual energy consumption. Calculate the integrated annual energy consumption, IAEC, of a conventional electric cooking top, in kilowatt-hours per year, using the following equation:

$$IAEC = E_{AET} + E_{TLP}$$

Where:

E_{AET} = the conventional electric cooking top annual active mode energy consumption, as determined in section 4.1.2.1 of this appendix; and
E_{TLP} = the annual combined low-power mode energy consumption of a conventional cooking top or any conventional cooking top component of a combined cooking product, as determined in section 4.2 of this appendix.

4.3.2 Conventional gas cooking top integrated annual energy consumption. Calculate the integrated annual energy consumption, IAEC, of a conventional gas cooking top, in kBtu per year, defined as:

$$IAEC = E_{AGT} + (E_{TLP} \times K_e)$$

Where:

E_{AGT} = the conventional gas cooking top annual active mode total energy consumption, as determined in section 4.1.2.2.3 of this appendix;

E_{TLP} = the annual combined low-power mode energy consumption of a conventional cooking top or any conventional cooking top component of a combined cooking product, as determined in section 4.2 of this appendix; and

K_e is defined in section 4.1.1.2.6 of this appendix.

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Part III

Department of Transportation

Office of the Secretary

14 CFR Parts 259, 260, and 399
Airline Ticket Refunds and Consumer Protections; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259, 260, 399

[Docket No. DOT–OST–2022–0089]

RIN No. 2105–AF04

Airline Ticket Refunds and Consumer Protections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT or the Department).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The U.S. Department of Transportation (Department or DOT) is proposing to codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable. The Department is also proposing to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. Furthermore, the Department is proposing to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits, if the carrier or ticket agent received significant financial assistance from the government as a result of a public health emergency. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit, or refund.

DATES: Comments should be filed by November 21, 2022. Late-filed comments will be considered to the extent practicable. Petitions for a hearing pursuant to 14 CFR 399.75(b)(1) must also be filed by November 21, 2022.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2022–0089 by any of the following methods:

- *Federal eRulemaking Portal:* go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0089 or the Regulatory Identification Number (RIN 2105–AF04) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Clereece Kroha or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342 (phone), *clereece.kroha@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose

This NPRM is intended to ensure that travelers are treated fairly when airlines cancel flights to, from, or within the United States or make significant changes to the scheduled itineraries to, from, or within the United States that consumers purchased, which includes significant changes to the quality of the air travel specified in the itinerary. Currently, the Department's regulations at 14 CFR part 259 require that airlines provide prompt refunds ''when ticket refunds are due.'' Further, the Department's regulations at 14 CFR part 399 require that ticket agents ''make proper refunds promptly when service cannot be performed as contracted.'' This NPRM proposes to clarify that when carriers cancel flights or make significant changes to flight itineraries and the contracted service was not provided, ticket refunds are due if consumers do not accept the alternative transportation offered by carriers or ticket agents. It also proposes to define ''significant change of flight itinerary'' and ''cancelled flight'' to protect consumers and ensure consistency among carries and ticket agents with regard to when passengers are entitled to refunds.

This NPRM is also designed to ensure consumers are treated fairly by limiting their financial losses on forgone air travel when: (1) they are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay at home order, entry restriction, or border closure); (2) are advised by a medical professional or determine consistent with public health guidance issued by the Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel during a public health emergency to protect themselves from a serious communicable disease); or (3) are advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel, irrespective of any declaration of a public health emergency, because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others. Under the Department's current regulation, there is no requirement for an airline or a ticket agent to issue a refund or travel credit to a passenger holding a non-refundable ticket when the airline operated the flight and the passenger does not travel, regardless of the reason that the passenger does not travel. It is the Department's goal to protect consumers' financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control. This financial protection would further incentivize individuals to postpone travel when they are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease that would pose a threat to others.

B. Statutory Authority

1. Unfair Practice

DOT issues this NPRM pursuant to the authority set forth in 49 U.S.C. 41712. This provision authorizes the Department to take action to address

unfair or deceptive practices or unfair methods of competition by air carriers, foreign air carriers, or ticket agents. On December 7, 2020, the Department issued a final rule that, among other things, requires the Department to provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers when issuing aviation consumer protection rulemakings that are not specifically required by statute and are based on the Department's general authority to prohibit unfair or deceptive practices under section 41712. That final rule also adopted definitions for the terms ''unfair'' and ''deceptive.'' [1] This NPRM is based on the unfair component of 49 U.S.C. 41712. Under the Department's final rule implementing section 41712, a practice is ''unfair'' to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Proof of intent is not necessary to establish unfairness.[2]

Pursuant to its authority under section 41712, the Department in this NPRM proposes to require that airlines and ticket agents provide prompt ticket refunds to consumers for flights cancelled or significantly changed by carriers. The Department also proposes to require, under its authority in section 41712, in concert with 49 U.S.C. 40101(a) and 41702, that carriers and ticket agents provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity or are advised by a medical professional or determine consistent with public health guidance not to travel to protect themselves or others from a serious communicable disease. The Department's tentative basis for concluding that the practices this NPRM would prohibit are ''unfair'' is articulated in the paragraphs that follow.

An airline's or ticket agent's practice of not providing a prompt refund to a ticketed passenger when the carrier cancels or significantly changes the passenger's flight and the passenger does not accept the alternative offered is ''unfair'' to consumers as it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Consumers are substantially harmed when they pay money for a service that the airline does not provide, and the airline or ticket agent refuses to provide a refund or unduly delays issuance of the refund. According to the Department's data, the average cost for a domestic one-way ticket was $292 for calendar year 2020 and $307 for 2021.[3] The Department does not publish data on the average cost of international airline tickets. According to Sabre Global Demand Data, however, the average one-way fare between the United States and a foreign point is $513 in 2020. It is not sufficient for carriers or ticket agents to only offer vouchers to passengers instead of the money paid for a service the airline did not provide. This is particularly true in certain situations, *e.g.,* the consumer bought the airfare for a specific event and the cancelled flight or significantly changed flight itinerary prevents the consumer from attending or significantly impacts the consumer's ability to attend the event. Regardless of the reason, consumers may reasonably prefer and are entitled to refunds. The availability of a voucher does not sufficiently mitigate the substantial harm of failing to provide a prompt refund.

This harm is also not reasonably avoidable by consumers. Consumers are unable to avoid these injuries because cancellations or significant changes to their flights are outside of their control. An airline association has asserted that consumers who paid a lower fare for ''non-refundable'' flights could have avoided the harm by paying a higher fare for fully refundable tickets.[4] In DOT's view, however, the term ''non-refundable'' does not apply in cases where the airline cancels the flight or makes a significant change in the service provided. A reasonable consumer would not expect that he or she must pay more to purchase a refundable ticket in order to be able to recoup the ticket price when the airline fails to provide the service paid for through no action or fault of the consumer.

It is also the Department's view that the tangible and significant harm to consumers of not receiving a refund is not outweighed by countervailing benefits to consumers or competition. While the Department recognizes that a nonrefundable ticket allows consumers to pay a lower price for an airline ticket, the Department does not expect that this proposed requirement would result in airlines no longer offering a nonrefundable ticket category as the term nonrefundable has generally been understood not to apply in cases where the airline cancels the flight or makes a significant change in the service provided. Indeed, for decades, the Department's Office of Aviation Consumer Protection has made clear that it interpreted the prohibition against unfair practice to mean airlines cannot refuse to refund passengers holding non-refundable tickets when the carrier cancels or makes a significant change to a flight. This has not resulted in airlines no longer offering nonrefundable tickets to consumers.

Similarly, it is an ''unfair practice'' by an airline or a ticket agent to not provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (*e.g.,* as a result of a stay at home order, entry restriction, or border closure) or are advised by a medical professional or determine consistent with public health guidance (*e.g.,* CDC guidance) not to travel to protect themselves or others from a serious communicable disease. Consumers are substantially harmed when they pay money for a service that they are unable to use because they were directed or advised by governmental entities or medical professionals not to travel to protect themselves or others from a serious communicable disease, and the airline or ticket agent does not provide a non-expiring credit or voucher or a refund. This loss of the value of their tickets is a substantial harm that is not reasonably avoidable because the only way to avoid it is to disregard direction from governmental entities or medical professionals not to travel and risk inflicting serious health consequences on themselves or others. Consumers who decide to travel even if they are particularly vulnerable to contracting a serious communicable disease due to age or a health condition would be putting themselves at risk. Consumers who will lose the entire value of their tickets may choose to travel even when

[1] On February 2, 2022, the Department published a final rule title *Procedures in Regulating Unfair or Deceptive Practices.* See, 87 FR 5655. This final rule, among other things, simplifies the hearing procedures set forth in 14 CFR 399.79 when the Department proposes a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive. The procedures finalized by this rule do not change the requirement that the Department articulate the basis for concluding that a practice is unfair or deceptive to consumers when issuing discretionary aviation consumer protection rulemakings under the authority of 49 U.S.C. 41712.

[2] See *Final Rule, Defining Unfair or Deceptive Practices,* 85 FR 78707, Dec. 7, 2020.

[3] Bureau of Transportation Statistics, *https://www.transtats.bts.gov/AverageFare/.*

[4] See, *e.g., Airline Ticket Refunds, Presentation by Airlines for America to the Advisory Committee for Aviation Consumer Protection (ACPAC),* Dec. 2, 2021, *https://www.regulations.gov/document/DOT-OST-2018-0190-0030.*

they have been advised not to travel because they have or may have contracted a serious communicable disease, even though they would be risking harm to others to avoid financial loss. These types of actions by consumers are not in the public interest. The tangible and significant harm to consumers of losing the entire value of their ticket is not outweighed by potential countervailing benefits to consumers or competition. In response to restrictions and health concerns that limited consumers' ability to travel during the COVID–19 pandemic in 2020, many airlines recognized the unfairness of retaining consumers' money when the consumer did not utilize the airlines' service and provided vouchers when consumers did not travel. However, complaints received by the Department show that numerous consumers were unable to use these vouchers before they expired during the pandemic. Further, the Department is aware of that some airlines and ticket agents did not provide vouchers or refunds to consumers who were unable to travel. Requiring airlines and ticket agents to provide non-expiring travel credits/vouchers or refunds provides consumers the opportunity to postpone travel and still retain some portion of the value of their ticket when they are advised by a medical professional or determine consistent with public health guidance (*e.g.,* CDC guidance) not to travel because they have or may have a serious communicable disease.

2. Safe and Adequate Air Transportation

49 U.S.C. 41702 states that an ''air carrier shall provide safe and adequate interstate air transportation.'' [5] The Department's predecessor, the Civil Aeronautics Board (CAB), relied on section 404(a) of the Federal Aviation Act of 1958 (subsequently codified as 49 U.S.C. 41702 in Pub. L. 103–272), requiring air carriers ''to provide safe and adequate service, equipment and facilities,'' as authority to adopt its first regulation restricting smoking on air carrier flights.[6] The Department relied on this same authority in issuing a 2016 final rule prohibiting the use of e-cigarettes aboard aircraft (81 FR 11415; Mar. 4, 2016). The Department explained in the 2016 final rule that the CAB found that ''nonsmoking passengers on aircraft may be assigned to a seat next to, or otherwise in close proximity to, persons who smoke and cannot escape this environment until the end of the flight.'' The Department noted that the CAB relied on its authority to provide for ''adequate'' service to address this issue in adopting the smoking ban. *Id.* at 11420–11421. With regard to e-cigarette use, the Department stated that, in addition to the direct effects of inhaling the aerosol from e-cigarettes, ''passengers may reasonably be concerned that they are inhaling unknown quantities of harmful chemicals, and that they will not be able to avoid the exposure for the duration of the flight.'' *Id.* at 11421. In prohibiting the use of e-cigarettes, the Department relied on its authority to ensure adequate service under section 41702. *Id.*

Similar to its prior actions related to smoking and the use of e-cigarettes, the Department issues this NPRM pursuant to the authority provided in § 41702 to ensure safe and adequate service. The Department proposes to require U.S. carriers to provide non-expiring travel vouchers or credits, or in certain circumstances refunds, to consumers holding non-refundable tickets for scheduled flights within the United States in circumstances where consumers are restricted or prohibited from traveling by a governmental entity due to concerns about a serious communicable disease or are advised by a medical professional or determine consistent with public health guidance not to travel to protect themselves or others from a serious communicable disease. The Department finds that passenger concerns about being seated next to, or in close proximity to, a passenger who may have a serious communicable disease justify the Department's use of its authority to ensure adequate service under section 41702. In line with the statute, this proposed requirement would promote safe and adequate air transportation by reducing incentives for individuals who have been advised against traveling because they have or may have a serious communicable disease to travel in an attempt to retain some portion of the value of their ticket. This proposal would also allow consumers who are particularly vulnerable to a serious communicable disease to avoid having to choose between forfeiting the value of a ticket or attempting to travel in spite of their vulnerability by allowing them to receive a travel credit and postpone travel during a public health emergency.

Further, 49 U.S.C. 40101(a) directs the Department in carrying out aviation economic programs, including issuing regulations under 49 U.S.C. 41702 and 41712, to consider certain enumerated factors as being in the public interest and consistent with public convenience and necessity. These factors include ''the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices'' and ''preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation'', as well as ''assigning and maintaining safety as the highest priority in air commerce.'' Based on the forgoing discussion, the Department views this proposal as consistent with the statutory mandate of section 40101(a).

C. Unfair or Deceptive Practice Request for a Hearing

For the reasons discussed in Section I.B.1., the Department tentatively concludes that the practices it proposes to prohibit in this NPRM are unfair and deceptive. Specifically, pursuant to its authority under section 41712, the Department in this NPRM proposes to require that airlines and ticket agents provide prompt ticket refunds to consumers for flights cancelled or significantly changed by carriers if a consumer does not accept alternative transportation offered by carriers or ticket agents. The Department also proposes to require, under its authority in section 41712, in concert with 49 U.S.C. 40101(a) and 41702, that carriers and ticket agents provide non-expiring travel credits or vouchers, and—under certain circumstances—refunds, to consumers who are restricted or prohibited from traveling by a governmental entity or are advised against traveling to protect themselves or others from a serious communicable disease.

Pursuant to the Department's regulations at 14 CFR 399.75(b)(1), any interested party may file a petition to hold a hearing on the proposed rule prior to the close of the comment period. As stated in the **DATES** section, petitions must therefore be received by November 21, 2022.

The Department's regulations 14 CFR 399.75(b)(2) provide that the Department will grant a petition if the petitioner makes a clear and convincing showing that granting the petition is in the public interest. Factors considered in determining whether a petition is in the public interest include ''(i) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality

[5] An ''air carrier'' is defined as ''a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.'' ''Interstate air transportation'' is defined as ''the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft'' within the United States. 49 U.S.C. 40102(a)(2) and (a)(25).

[6] 38 FR 12207, May 10, 1973.

Act; (ii) Whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; (iii) Whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; (iv) Whether the requested hearing would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; and (v) Whether the hearing would unreasonably delay completion of the rulemaking.'' DOT must also provide an explanation of the basis for the decision on a petition. (14 CFR 399.75(b)(3)).

D. Summary of the Proposed Regulatory Provisions

The Department is proposing to enhance its aviation consumer protection requirements applicable to refunds by amending the Department's regulations in 14 CFR parts 259, 260 and 399. On July 21, 2021, the Department issued a Notice of Proposed Rulemaking titled ''Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided.'' [7] That NPRM proposes, among other things, adopting a new part under Subchapter A of Title 14 of the Code of Federal Regulations, 14 CFR part 260,[8] which would address refund requirements related to fees for significantly delayed checked bags and fees for ancillary services that are paid for but not provided.[9] In addition to the July 2021 NPRM, this proposed action—Airline Ticket Refunds and Consumer Protections—would substantially increase the protections provided to consumers by adding sections to the proposed part 260, amending part 259, and amending part 399 as provided in the summary table below.

Subject	Proposal
Refunding Airline Tickets	Amend 14 CFR parts 259, 260, and 399 to require U.S. and foreign airlines and ticket agents to provide prompt ticket refunds for ''cancelled flights'' or ''significant changes of flight itinerary'' when consumers do not accept alternative transportation.
Definition of Cancelled Flight	Amend 14 CFR parts 260 and 399 to define cancelled flight as a flight that was published in a carrier's Computer Reservation System (CRS) at the time of the ticket sale but was not operated by the carrier.
Definition of Significant Change of Flight Itinerary.	Amend 14 CFR parts 260 and 399 to define significant change of flight itinerary as a change made by a carrier where: (1) the passenger is scheduled to depart from the origination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) earlier than the original scheduled departure time; (2) the passenger is scheduled to arrive at the destination airport three hours or more (for domestic itineraries) or six hours or more (for international itineraries) later than the original scheduled arrival time; (3) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport; (4) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (5) the passenger is downgraded to a lower class of service; or (6) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.
Notification of Right to Refund	Amend 14 CFR parts 259 and 399 to require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds.
Providing Non-Expiring Travel Credits or Vouchers.	Amend 14 CFR parts 259 and 399 to require U.S. and foreign airlines and ticket agents issue non-expiring travel credits or vouchers to: (1) consumers who are restricted or prohibited from traveling in relation to a serious communicable disease (*e.g.*, stay at home order, entry restriction, border closure), *irrespective of a public health emergency being declared,* by a governmental entity, whether it be a foreign government or Federal, State or local government; (2) consumers who are advised not to travel *during a public health emergency* by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO to protect themselves from a serious communicable disease; and (3) consumers who are advised not to travel, *irrespective of a public health emergency being declared,* by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others.
Providing Refunds if Receiving Significant Governmental Financial Assistance.	Amend 14 CFR part 260 and 399 to require U.S. and foreign airlines and ticket agents that receive significant governmental financial assistance *after the effective date of the final rule* in relation to a public health emergency to issue refunds, in lieu of non-expiring travel credits or vouchers, to:

[7] 86 FR 38420.

[8] On July 21, 2021, the Department issued a Notice of Proposed Rulemaking titled ''*Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided.*'' See, 86 FR 38420. That NPRM proposes, among other things, adopting a new part under Subchapter A of Title 14 of the Code of Federal Regulations, 14 CFR part 260, which would address refund requirements related to fees for significantly delayed checked bags and fees for ancillary services that are not provided. The Department believes that this new proposed rule would be an appropriate vehicle to add the proposed ticket refund requirements. As such, in this NPRM, we are proposing to add sections to the proposed part 260 that addresses ticket refund requirements. The Department will review comments already submitted on baggage fee and other ancillary fee refunds in that rulemaking. Comments on part 260 submitted in response to this rulemaking should solely focus on proposals related to ticket refunds with one exception. This exception is the proposed regulatory text at 14 CFR 260.9, which would specify that a carrier's failure to ensure that its contract of carriage provisions is consistent with 14 CFR part 260 would be considered an unfair and deceptive practice.

[9] DOT is not making changes to the proposals from the July 21, 2021 proposed rule in this NRPM. Accordingly, comments submitted in response to the 2021 NPRM regarding the refund requirements related to fees for significantly delayed checked bags and ancillary services need not be resubmitted.

Subject	Proposal
	(1) consumers who are restricted or prohibited from traveling in relation to a serious communicable disease (*e.g.*, stay at home order, entry restriction, border closure), *during a public health emergency,* by a governmental entity, whether it be a foreign government or Federal, State or local government; (2) consumers who are advised not to travel *during a public health emergency* by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO to protect themselves from a serious communicable disease; and (3) consumers who are advised not to travel *during a public health emergency* by a medical professional or determine not to travel consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO because they have or may have contracted a serious communicable disease and their condition would pose a threat to the health of others. Eligible consumers must make a request for a refund from the carrier or ticket agent within 12 months of the date that the Department has made a determination that the carrier or the ticket agent received significant financial assistance.
Documentation	Amend 14 CFR parts 259 and 399 to allow U.S. and foreign airlines and ticket agents to require consumers requesting a refund or a non-expiring credit or voucher for a non-refundable ticket when the flight is still scheduled to be operated without significant change to provide, as appropriate: (1) the applicable government order or other document demonstrating how the passenger's ability to travel is restricted; and/or (2) a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger's health would be endangered if the passenger traveled or the passenger would pose a direct threat to the health of others if the passenger traveled.
Service and Processing Fees	Amend 14 CFR part 399 to allow ticket agents to retain a service fee for purchasing the ticket or processing a refund or a non-expiring credit or voucher, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. Amend 14 CFR parts 259 and 260 to allow airlines to assess a fee for processing a refund or a non-expiring credit or voucher when the flight is still scheduled to be operated without significant change, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

II. Applicability

A. Airlines

(1) Covered Carrier

The proposed rule in 14 CFR parts 259 and 260 applies to a certificated or commuter air carrier [10] that operates scheduled passenger service to, within, and from the United States using aircraft of any size, and to a foreign carrier that operates scheduled passenger service to or from the United States using aircraft of any size. The Department's existing regulation at 14 CFR 259.5 requiring carriers to adopt and adhere to a customer service plan, which includes a commitment to provide prompt ticket refunds to passengers when a refund is due, applies to all scheduled flights of a certificated or commuter air carrier if the carrier operates passenger service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all scheduled flights to and from the United States of a foreign carrier if the carrier operates passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats.[11] As such, section 259.5 presently does not cover U.S. and foreign carriers operating scheduled flights to, from, or within the United States, as applicable, solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats. The Department considered the burden on smaller carriers of adopting and adhering to a comprehensive customer service plan, which extends to all aspects of customer service, and ultimately determined that exempting smaller carriers that do not operate aircraft larger than 30 seats would protect the vast majority of passengers using scheduled service without unduly burdening smaller carriers.

In this NRPM, the Department is proposing to revise section 259.5(b)(5) by defining under what situations a ticket refund would be due and under what situations passengers cancelling a non-refundable ticket should receive a travel credit or voucher. The proposal would require all U.S. and foreign carriers operating scheduled services to, from, or within the United States to comply with the refund requirement when carriers cancel or make a significant change to a flight itinerary, and to provide non-expiring travel credits or vouchers, or in certain circumstances refunds, when a passenger is unable or advised not to travel due to a concern related to a serious communicable disease, regardless of the size of the aircraft they operate. Carriers that are otherwise not currently covered under section 295.5 to provide refunds when due because they operate only small aircraft would be required, under this proposal, to comply with the specific requirements on refunding and providing vouchers and credits.

The Department has tentatively made the policy decision to include these smaller carriers in the refund and voucher issuance requirements as specified in section 259.5 for the following reasons. With respect to refund, these carriers are already covered in the Department's credit card

[10] A certificated air carrier is an air carrier holding a certificate issued under 49 U.S.C. 41102. A commuter air carrier is an air carrier as established by 14 CFR 298.3(b) that carries passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule, using small aircraft—*i.e.,* aircraft originally designed with the capacity for up to 60 passenger seats. See 14 CFR 298.2. Commuter air carriers, along with air taxi operators, operating under 14 CFR part 298 are exempted from the certification requirements of 49 U.S.C. 41102.

[11] 14 CFR 259.2, 259.3, and 259.5(a).

purchase refund regulation, 14 CFR part 374. The Department's proposal merely clarifies under what situations a refund is due and does not impose additional requirements on carriers. With respect to communicable disease related travel voucher, credit, and refund issuance, this proposal would impose new requirements on carriers, including these smaller carriers. The Department has determined that placing this burden on smaller carriers is appropriate because the financial harm and the serious potential health risks this proposal is intended to address and prevent affect consumers traveling on all airlines. The Department believes that the expansion of the applicability of this proposed regulation is particularly meaningful to many consumers traveling on smaller carriers who are from economically disadvantaged small communities. The Department seeks public comments on whether the proposed expansion of the regulation to include smaller carriers is reasonable, and what obstacles, if any, these smaller carriers may encounter to comply.

(2) Covered Flights and Consumers Protected

The current refund requirement in part 259 applies to all scheduled flights of a covered U.S. carrier and all scheduled flights to and from the U.S. of a covered foreign carrier. While proposing to expand the scope of covered carriers for the refund and travel credit issuance requirements, DOT does not propose to expand the scope of covered flights or consumers protected. Nonetheless, the Department is interested in exploring whether clarification regarding the scope of the covered flights and consumers protected is appropriate. Any examination of the applicability of DOT's refund requirement for aviation consumers would not be complete without looking at Regulation Z, as codified in 12 CFR part 226 and 12 CFR part 1026,[12] and the airline refund regulation in 14 CFR part 374, which implements the requirement of Regulation Z with respect to airlines. The applicability provision in 14 CFR 374 states that ''this part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.'' [13] In Supplement I to parts 226 and 1026, the issue of foreign applicability is addressed by explaining that ''Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state. . .'' and that ''[i]f an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation.'' [14] The Department's authority to prohibit unfair or deceptive practices in air transportation or sale of air transportation [15] means that the Department's aviation consumer protection regulations, including the refund regulations in 14 CFR parts 259 and 374, cover flights to, within, and from the United States, irrespective of whether the consumer on those flights is or is not a resident of the United States. While Regulation Z focuses on whether consumers reside in the United States and whether the sellers (airlines or ticket agents) have a branch located in the United States that sells to consumers in the United States,[16] the Department's airline refund regulations have focused on whether the flight subject to the refund request is a flight to, from, or within the United States, irrespective of whether the consumer requesting a refund is a resident of the United States. The Department seeks comments on whether the scope of the refund requirement under parts 259, 260, and 399 should be amended to make clear, consistent with the Department's statutory authority under 49 U.S.C. 41712, that the consumers' place of residence is irrelevant to whether the consumer is entitled to a refund. The Department also seeks comment on whether the Department, as a matter of policy, should limit the applicability of the refund requirement to U.S. consumers (U.S. citizens and residents) on covered flights. Commenters should articulate the reason for their position regarding expansion or limitation, with a focus on whether such a provision would better protect U.S. consumers while not overly burdening airlines with matters that do not significantly impact U.S. consumers.

The Department is also interested in comments regarding whether a limited expansion of the applicability is appropriate to cover certain flight segments between two foreign points. For example, should the Department's refund requirements in parts 259 and 260 cover segments between two foreign points marketed and operated by a foreign carrier as a part of an international itinerary to or from the United States? Should these proposed requirements only cover the foreign segment if it is marketed as a code-share flight under a U.S. carrier's code? For example, for a passenger traveling between New Delhi and New York via London, should the refund rule cover the cancellation or significant change of the New Delhi-London segment if both New Delhi-London and London-New York segments are sold on the same ticket under a U.S. carrier's code? Should the rule cover an interline itinerary on the same ticket but the New Delhi-London segment is under a foreign carrier's code and the London-New York segment is under a U.S. carrier's code?

This proposed rulemaking, similar to the existing regulation in 14 CFR 259.5 on refunds, would cover only scheduled flights. Public charter passengers oftentimes also face flight cancellations, itinerary changes, and travel plan interruptions related to communicable diseases. The Department's regulation on public charter operations, 14 CFR part 380, has specific consumer protection requirements regarding flight cancellations by a public charter operator [17] or by a direct air carrier [18] and under what conditions a public charter participant (passenger) would be entitled to a refund,[19] including the right to a refund due to a ''major change'' [20] made by the public charter operator as defined in 14 CFR 380.33. Furthermore, the public charter regulation provides that a passenger would receive a full refund (less any applicable administrative fee of no more than $25) if the passenger wishes to cancel the booking, as long as that passenger provides a substitute passenger in his or her place.[21] This requirement would potentially address the situation where the charter flight is operated but a passenger is unable or

[12] The Department's refund regulation in 14 CFR part 374 refers to both 12 CFR part 1026 and Regulation Z of the Board of Governors of the Federal Reserve, which is in 12 CFR part 226. See 14 CFR 374.3(b).

[13] 14 CFR 374.2.

[14] See, *12 CFR Appendix Supplement I to Part 226—Official Interpretations.* See also *12 CFR Appendix Supplement I to Part 1026—Official Staff Interpretations.*

[15] Air transportation means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft. See 49 U.S.C. 40102 (a)(5).

[16] The Department would consider an airline that has a website that markets to U.S. consumers to be a branch located in the United States.

[17] See, *e.g.,* a public charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip, 14 CFR 380.32(h).

[18] See, 14 CFR 380.43, a direct air carrier may not cancel any charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

[19] See, *e.g.,* If a charter is cancelled, a refund will be made to the participant within 14 days after the cancellation, 14 CFR 380.32(k); any participant will receive a full refund less an administrative fee upon providing a substitute participant within 14 days, 14 CFR 380.32(m)(2) and 380.32(n).

[20] 14 CFR 380.32(r).

[21] 14 CFR 380.32(m)(2).

unwilling to travel because of a concern related to a serious communicable disease. It is the Department's view that the regulatory framework protecting public charter passengers in the event of charter operator-initiated cancellation or changes or passenger-initiated changes due to a concern regarding communicable disease has been in place for many decades, which has been adequately addressing issues unique to public charter operations. The Department does not propose to amend the separate requirements regarding passenger refunds applicable to public charter operations.

B. Ticket Agents

The proposed rule, similar to the existing rule on refunds in 14 CFR 399.80(l), applies to ticket agents of any size. A ''ticket agent'' is defined in 49 U.S.C. 40102(a)(45) to mean a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation. ''Air transportation'' is also a defined term by statute, which essentially encompasses flights to, from, or within the United States.[22] In this NPRM, the Department proposes that the refund and travel voucher or credit issuance requirements apply to retail ticket agents selling tickets directly to consumers for scheduled passenger service to, from, or within the United States. The Department is limiting the proposed applicability to scheduled service as it believes that there are other adequate consumer protection mechanisms already in place to protect consumers who purchase public charter air transportation (14 CFR part 380) and single entity charter air transportation (14 CFR part 295) from ticket agents. Similar to the scope of covered flights and protected consumers for airline refunds, the Department is interested to know whether it is adequate to require ticket agents to provide refunds and travel credits or vouchers, as appropriate, for flights to, from, or within the United States regardless of whether the seller has a location in the U.S. through which the transaction occurred and regardless of whether the consumer is a U.S. resident, or whether the Department should focus on refund requests for U.S. based transactions by U.S. residents. The Department also seeks comments on whether the rule should cover tickets for flights to, within, or from the United States sold by a ticket agent from a foreign location, and to what extent regulating such transactions would benefit U.S. consumers.

III. Refunding Airfare for Cancelled or Significantly Changed Flights

A. Background

The Department has the authority to prohibit unfair or deceptive practices by airlines and ticket agents in air transportation or the sale of air transportation under 49 U.S.C. 41712. For well over 20 years, the Department's Office of Aviation Consumer Protection has informed airlines operating flights to, within, and from the United States that a refusal to refund passengers when an airline cancels or significantly changes a flight and passengers do not accept alternative transportation would be an unfair business practice in violation of section 41712, regardless of whether the passenger has purchased a non-refundable ticket. In a letter to U.S. carriers issued in 1996, the Office of Aviation Enforcement and Proceedings (now the Office of Aviation Consumer Protection) reminded carriers that a refusal to refund or an application of penalties to non-refundable tickets would be considered grossly unfair and a violation of section 41712 in situations where the change of flight time or travel date was necessitated by carrier action or ''an act of god'', *e.g.,* where the carrier cancels a flight for weather or mechanical reasons. The letter also explained that any contract of carriage or tariff provision mandating such a result would also be grossly unfair and a violation of section 41712.[23]

The Office of Aviation Consumer Protection's longstanding view that it is an unfair practice in violation of section 41712 for airlines to refuse refunds or impose monetary penalties on passengers holding nonrefundable tickets when the carrier cancels a flight or makes a significant change to a flight itinerary remained the same even when air travel was disrupted on a large scale. For example, following the aftermath of the terrorist attacks on September 11, 2001, the Department's Office of Aviation Consumer Protection issued a letter [24] to major U.S. airlines and U.S., international, and regional airline associations, reminding them of airlines' responsibility to provide refunds upon request to passengers who wish to cancel their trip as a result of a flight cancellation or significant schedule change made by the carriers. Recognizing the dramatic impact of the terrorist attacks on airline personnel and schedules, the deluge of refund requests that airlines received, and the added time needed to process them, the Office of Aviation Consumer Protection nonetheless stated that it expected carriers to dedicate the appropriate resources necessary to process refunds in a timely manner.

The Department reiterated this interpretation of 49 U.S.C. 41712 in a 2011 final rule. The Department's aviation consumer protection regulation in 14 CFR 259.5(b)(5), adopted in 2011, requires covered U.S. and foreign air carriers to adopt and adhere to a customer service plan, which must include, among other things, a commitment that carriers will provide prompt refunds to consumers when ticket refunds are due. Although the rule text does not specify under what situations a ticket refund would be due, in the preamble of the 2011 final rule implementing this requirement, the Department discussed extensively circumstances under which a refund, including a refund of non-refundable tickets, should be provided. These circumstances include flight cancellations or significant flight delays where consumers choose to not travel because of these disruptions. The Department stated:

> We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (*e.g.,* greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996 . . ., the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is [cancelled] and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action.[25]

In the 2011 final rule, the Department also stated that while the Department views it as manifestly unfair for carriers

[22] 49 U.S.C. 40102(a)(5). ''Air transportation'' means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

[23] See, *Industry Letter to U.S. Air Carriers,* July 15, 1996, *https://www.transportation.gov/sites/dot.gov/files/docs/19960715_2.pdf.*

[24] See, *Email to Major Airlines and Aviation Associations,* September 25, 2001, *https://www.transportation.gov/sites/dot.gov/files/docs/20010925_0.pdf.*

[25] See, *Final Rule, Enhancing Airline Passenger Protections,* 76 FR 23110, at 23129, April 25, 2011. *see also id.* (the Office ''continue[s] to believe that there are circumstances in which passengers would be due a refund, including a refund of non-refundable tickets and optional fees associated with those tickets, due to a significant flight delay'').

to refuse to provide prompt refunds when consumers choose to not travel and to not accept alternative transportation following a cancelled or significantly delayed flight, the Department was persuaded by industry commenters that it should not adopt a strict standard of what constitutes a significant delay for the purpose of determining whether a refund of the airfare is due. In deciding not to adopt a strict standard, the Department explained that the definition of a significant delay depends on a wide variety of factors such as the length of the delay, length of the flight, and the passenger's circumstances. The Department declared that its Office of Aviation Consumer Protection would continue to monitor how carriers apply their non-refundability provision in the event of a significant change in scheduled departure or arrival time and would determine based on the facts and circumstances of the delay whether a failure to provide a refund in response to such a delay is an unfair and deceptive practice.

More recently, in April and May 2020, the Office of Aviation Consumer Protection issued two notices reminding airlines and ticket agents that their obligation to refund passengers for cancelled or significantly changed flights remains unchanged even given the impact of the COVID–19 pandemic.[26] The May 2020 notice also acknowledged that neither the term ''significant change'' nor ''cancellation'' is defined in regulation or statute. It noted that, based on the Office of Aviation Consumer Protection's review of the refund policies and practices of U.S. and foreign air carriers, airlines define ''significant change'' and ''cancellation'' differently when fulfilling their obligation to provide refunds. Because ''cancellation'' and ''significant change'' are not defined in the context of ticket refunds, the Office of Aviation Consumer Protection stated that airlines may develop reasonable interpretations of those terms.

Similar to the refund requirement on airlines in section 259.5, the Department's aviation consumer protection regulation requires ticket agents to provide prompt refunds when the services paid for by consumers cannot be provided as contracted. Specifically, 14 CFR 399.80(l) declares it an unfair or deceptive practice by a ticket agent of any size to fail or refuse to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale. This provision, originally adopted by the Civil Aeronautics Board, has not been amended since at least 1960s. The regulation in section 399.80(l) also does not specify what situations would constitute ''service [that] cannot be performed as contracted,'' which would impose refund obligations on ticket agents.

With respect to the timeliness of a refund when it is due, carriers and ticket agents are subject to the credit refund requirements of Regulation Z as discussed earlier. The Department's regulation, 14 CFR part 374, implements Regulation Z with respect to airlines. These regulations establish that, with respect to refund requests involving airline tickets purchased with a credit card, the airline must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receipt of full documentation for the refund requested. Further, the Department's regulation in 14 CFR part 259 requires airlines to provide refunds involving airline tickets purchased with cash or check within 20 days after receiving a complete refund request.

These time frames for refunding consumers have been challenging for airlines and ticket agents when air travel was disrupted in a large scale. For example, in the early months of the COVID–19 pandemic, airlines responded to travel restrictions imposed by various governments and the rapidly reduced consumer demand by cancelling significant amounts of flights and making drastic adjustments to the schedules of the flights that were still operating. These cancellations and schedule changes by airlines, in conjunction with cancellation requests by many consumers who had already booked travel but decided that they no longer wished to travel during a pandemic, led to an unprecedented number of refund requests, which airlines had difficulty processing in a timely manner. In addition, many airlines were facing cashflow difficulties, which resulted in them initially being reluctant to process refund requests. Similar to the airlines' situation, ticket agents also faced a drastic increase in refund requests from consumers. In addition to facing the similar cashflow difficulties arising from the large numbers of refund requests, ticket agents' cashflow situation may have been more challenging because they were not the ultimate recipients of the consumer funds originally used to purchase the ticket. Consumers complained that many ticket agents only offered travel credits or simply passed the requests on to airlines, failing to provide a refund.

Since March 2020 when the COVID–19 public health emergency was declared in the United States, the Department's Office of Aviation Consumer Protection has received a significant number of consumer complaints regarding airlines and ticket agents refusing to provide a refund or delaying processing of refunds when their flights were cancelled or significantly changed due to the impact of the public health emergency.[27] Consumers, many holding non-refundable tickets, allege that after flight cancellations or changes that affected their travel were made by airlines, instead of providing refunds, they were offered travel vouchers or credits for future use. Consumers often mention the financial difficulties they are already suffering from the effect of the pandemic, which are exacerbated by the inability to receive timely refunds of their airfares. In addition, consumers assert that the airline vouchers or credits are not useful to them due to the lack of available flights or their inability or unwillingness to travel overall because of government restrictions and health concerns.

Despite the Office of Aviation Consumer Protection's efforts to ensure airlines' and ticket agents' compliance with their refund obligations, the significant delays in providing refunds led the Office of Aviation Consumer Protection to pursue enforcement action

[26] *See* ''Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID–19 Public Health Emergency on Air Travel'' (May 12, 2020) (''May 12, 2020 Enforcement Notice''), available at *https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020;* ''Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID–19 Public Health Emergency on Air Travel'' (April 3, 2020) (''April 3, 2020 Enforcement Notice''), available at *https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.*

[27] See, *Report to the White House Competition Council: U.S. Department of Transportation's Investigatory, Enforcement and Other Activities Addressing Lack of Timely Airline Ticket Refunds Associated With the COVID–19 Pandemic,* September 9, 2021, *https://www.transportation.gov/individuals/aviation-consumer-protection/dot-report-airline-ticket-refunds.* From January 1, 2020 to June 30, 2021, the Department received a total of 105,327 complaints concerning refunds. In comparison, from July 1, 2018 to December 31, 2019, the Department received a total of 2,264 complaints concerning refunds. This change represents an increase of 4,552%.

in appropriate instances. The Department's existing regulations pertaining to refunds have exacerbated this challenge and made it more difficult to monitor compliance and enforce requirements. This is because the existing refund requirement provides that airlines have an obligation to provide prompt refunds when refunds are due, but the Department's longstanding position on refunding airfare due to cancellations and significant delays is not codified in rule text. Also, the terms ''cancelled flight'' and ''significant change of flight itinerary'' are not defined in regulation, which has resulted in inconsistency among carriers on when passengers are entitled to refunds.

The Aviation Consumer Protection Advisory Committee (ACPAC) has also considered the issue of refund requirements applicable to airlines and ticket agents.[28] In a December 2, 2021 public meeting, the ACPAC examined the Department's current airline ticket refund regulations and enforcement activities, and received presentations from representatives of the airline industry, consumer rights advocacy groups, State consumer protection agencies, and ticket agents.[29] Focusing on the massive airline cancellations and changes during the COVID–19 pandemic, consumer rights advocates shared the frustration many consumers felt regarding not receiving timely refunds after airlines cancelled or made significant changes to their flights. They also expressed concern about airline internal policies that are not transparent or consistent in how delays and cancellations are defined and how lack of clarity or consistency affected passengers' refund eligibility. Airline representatives described the challenges airlines faced handling the massive volume of refund requests during the COVID–19 pandemic. They expressed support for the Department's effort to codify its longstanding policy regarding refunds but emphasized the long history of airlines' compliance with the existing regulation and advocated against prescriptive regulations establishing a hard time limit for significant changes that trigger a refund. Representatives of ticket agents expressed understanding of consumer frustration when requesting refunds through ticket agents but emphasized the ticket agents' role in acting as intermediaries between consumers and airlines in the process. They opined that in most refund cases ticket agents have no role in determining refund eligibility nor are they the appropriate source of refund issuance. Ticket agent representatives stated that they support the Department's effort to clarify ''significant change'' that triggers a refund requirement.

This NPRM proposes to clarify that airlines and ticket agents have an obligation to promptly refund consumers' airfares when airlines cancel or significantly change flight schedules or the quality of their services by including such language in the rule text. This rulemaking would also ensure the consistency of consumer protections and industry compliance across the board by defining the terms ''significant change of flight itinerary' and ''cancelled flight.'' The Department has reconsidered the rationale it stated in the 2011 final rule for not adopting a stricter standard that defines a ''significant change,'' and believes that the benefit of maintaining a performance-based standard, namely, the flexibility for airlines to determine the type of flight schedule changes that warrants a refund, does not justify the negative impact of such a standard on consumers. Indeed, the airline industry's and ticket agents' overall reactions to refund requests during the initial period of the COVID–19 pandemic, including refusal to issue refunds for cancelled or significantly changed flights and retroactively revising refund policies to apply more stringent criteria for refund eligibility, have shown that it is difficult and at times impossible to enforce the current standard by monitoring how carriers apply their non-refundability provisions in the event of a significant change and determining, on a case by case basis, whether a failure to provide a refund in response to such an itinerary change is an unfair or deceptive practice.

B. Proposals

In this NRPM, the Department is proposing to specifically require airlines and ticket agents to promptly refund airline ticket purchase prices if a passenger's flight itinerary is cancelled or significantly changed by an airline. We further propose to define ''cancelled flight'' and ''significant change of a flight itinerary'' that would result in a consumer being entitled to a refund. In the Department's view, by holding out in its Computer Reservation System (CRS) to the public a flight itinerary with specific characteristics, including origin and destination airport, scheduled departure and arrival dates and times, and other features material to a consumer, the carrier is making an offer of a specific service. The consumer, having accepted that specific offer by purchasing a ticket for a specific flight itinerary, is acting reasonably in expecting to be provided the service that was purchased. Thus, the carrier would be obliged to provide the flight as promised or provide a refund if unable to provide that specific flight and the consumer finds the alternative transportation offered by the carrier to be unacceptable. The carrier's failure to do so would be an unfair practice. Similarly, a ticket agent selling a ticket for the flight listed by the carrier is offering a specific service and is similarly engaging in an unfair practice if it does not provide a refund or assist the consumer in obtaining a refund from the carrier. This is because the harm to consumers is substantial and unavoidable when they do not receive the air transportation service that they purchased and, as discussed above, no countervailing benefit that outweighs the harm has been provided.

(1) Defining ''Cancelled Flight''

Although the Department interprets its aviation consumer protection regulation to require airlines and ticket agents to issue a refund for flights that are cancelled by airlines, the regulation does not define ''cancelled flight'' for the purpose of issuing a ticket refund.[30] The Department proposes to define a cancelled flight to mean a covered flight that was listed in the carrier's CRS at the time the ticket was sold to a consumer but was not operated by the carrier. Under this proposed definition, the reason that the flight was not operated (*e.g.,* mechanical, weather, air traffic control) would not matter. Also, the removal of a flight from a carrier's CRS after a consumer has purchased a ticket on that flight would not negate the obligation to provide a refund. For example, a flight would be considered a ''cancelled flight'' for the purpose of ticket refunds even if it was removed from the carrier's CRS six months before the passenger's scheduled departure, if the passenger had purchased the flight eight months prior to the scheduled departure.

[28] The ACPAC is a statutorily required committee most recently extended to 2023 by the FAA Reauthorization Act of 2018. The ACPAC evaluates current aviation consumer protection programs. It also provides recommendations to the Secretary for improving and establishing additional consumer protection programs that may be needed.

[29] See, Advisory Committee for Aviation Consumer Protection (ACACP) Docket: *https://www.regulations.gov/docket/DOT-OST-2018-0190.*

[30] For reporting purposes, a cancelled flight is defined as ''a flight operation that was not operated but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.'' See 14 CFR 234.2.

(2) Defining ''Significant Change of Flight Itinerary''

The NPRM proposes to require that airlines and ticket agents provide prompt refunds when an airline makes a ''significant change of flight itinerary'' and the passenger does not accept the alternative transportation offered and requests a refund. This proposal would cover any significant changes made by a carrier after the consumer purchased the ticket, including significant changes to an alternative flight accepted by the passenger after the initial flight was cancelled. In proposing a definition of a significant change of flight itinerary, the Department focused on what change, from a consumer's perspective, would materially alter the value of the airline ticket as compared to the original ticket. Based on this principle, the Department has tentatively determined that, at a minimum, changes that affect departure and/or arrival times, departure or arrival airport, a change in the type of aircraft that causes a significant downgrade in the air travel experience or amenities available onboard the flight, as well as the number of connections in the itinerary, would be significant to consumers. As such, the NPRM proposes to define a ''significant change of flight itinerary'' as a change to a flight itinerary made by a marketing or operating carrier that involves one of the following:

- A revised departure time that is scheduled to depart from the passenger's origination airport three hours or more earlier than the original scheduled departure time for a domestic flight itinerary, and six hours or more earlier for an international flight itinerary, regardless of the final arrival time;
- A revised arrival time that is scheduled to arrive at the passenger's final destination three hours or more later than the original scheduled arrival time for a domestic flight itinerary, and six hours or more later for an international flight itinerary, regardless of the initial departure time;
- A change in the original departing airport or the final arrival airport;
- An increase in the number of connecting points;
- A downgrade of the class of service; or
- A change in the type of aircraft that causes a significant downgrade of the available amenities and travel experience.

The Department seeks general comments regarding whether this approach is reasonable and fair to passengers while not imposing undue burden on carriers and ticket agents. The Department further seeks suggestions on any other changes to flight itineraries that airlines may make that should also be considered a ''significant change of flight itinerary.'' The Department also seeks comments on whether there are any operational concerns from airlines and ticket agents when implementing these proposed definitions into their refund policies that should be taken into consideration.

i. Early Departure and Late Arrival

When booking an air travel itinerary, aside from cost, the departure and arrival times are two of the major considerations for most passengers. Consequentially, a major change in the departure or arrival time is likely to cause significant disruptions to the passenger's travel and planned activities before and after the air travel. To define the extent of early departure or delayed arrival that should be considered as ''significant changes,'' the Department considered three options.

The first option, which we are proposing in this NPRM, is a set timeline of three hours applicable to domestic itineraries and another set timeline of six hours applicable to international itineraries that would constitute a significant departure and arrival change. Under the NPRM, airlines and ticket agents would be free to apply a shorter time period to constitute a significant departure or arrival change but would not be able to increase it beyond three hours for domestic flights and six hours for international flights. The Department considers this approach to be the most straightforward, clearly defined standard that would be easily understood by airlines and consumers. A bright line standard such as this would also make it easier for carriers and ticket agents to train personnel on how to respond to refund requests and would streamline and possibly expedite the refund review and issuance process. The Department proposes different timeframes for domestic itineraries and international itineraries, recognizing that many international itineraries involve long-haul flights for which carriers should be afforded more leeway before a change of departure or arrival time becomes grounds for a refund. However, the Department also recognizes that the proposed standard would allow international flights with shorter flight durations (*e.g.,* flights between Miami and Nassau) a much longer window of early departure or late arrival before a refund becomes due than some domestic flights with longer durations (*e.g.,* flights between New York and Honolulu). The Department seeks comments on whether, despite these variations, the standards drawn between domestic and international itineraries are reasonable for most refund requests and, if not, how the standards should be revised.

In applying the proposed standard to a refund request, airlines and ticket agents would consider the departure time of the first flight segment and the final arrival time of the last flight segment to determine whether a refund is due. In other words, an early departure of a connecting flight or a late arrival of a flight that is not the final flight, even exceeding the proposed timeframe, may not necessarily result in a passenger being entitled to a refund. For example, in a situation where a passenger is traveling from New York to Los Angeles via Denver, with a layover of 5 hours at Denver, if the passenger's first flight from New York to Denver was delayed and it resulted in an arrival delay of 3.5 hours into Denver, but the passenger was able to catch the flight from Denver to Los Angeles and experienced no delay in arriving at the final destination, there is no requirement for a refund despite the 3.5-hour arrival delay into Denver. Conversely, in the same example, if the passenger's flight from New York to Denver operated on time but the flight from Denver to Los Angeles has a change that results in a departure time of 3.5 hours earlier, and the passenger was able to catch that flight and arrived in Los Angles in time, that 3.5 hour early departure in Denver would not be a ''significant change of flight itinerary'' for the purpose of receiving a refund.

Another issue the Department wishes to clarify in application of the proposed standard is that the international standard of 6 hours would apply to the initial flight segment's departure and final flight segment's arrival even if that flight segment is a domestic flight, as long as the domestic segment is on the same ticket as the international segment(s). To illustrate this, assume a passenger is traveling from Chicago to London with Boston as the connecting point, and all flight segments are on the same ticket. Under the proposal, if the departure time of the flight from Chicago to Boston is changed to an earlier time, the early departure must exceed six hours for the passenger to be eligible for a refund. On the reverse route, when the passenger is traveling from London, stopping at Boston and then continuing to Chicago, the late arrival of the flight from Boston to Chicago must exceed six hours before the passenger would be eligible for a refund. This would not be the case if the two flight segments are on separate

tickets, and in that situation, each ticket would be treated as a separate itinerary, one domestic and one international. The Department welcomes comments on applying this proposed standard, particularly any operational challenges that could occur.

The second option the Department considered is the option of not defining the timeframes of early departure and late arrival. Under this approach, the Department would continue to use the word ''significant'' to describe the amount of time lapse that would justify a refund. The Department recognizes that the level of disruption and inconvenience to passengers caused by early departure or late arrival may differ depending on many factors, including each affected passenger's individual situations. However, determining refund eligibility based on these individualized factors is not the most efficient way to address refund issues. The Department is focused on striking a balance between considering all relevant factors on the one hand, and ensuring the efficiency, consistency, and certainty of its regulation on the other hand. In that regard, although this second option retains all the flexibility the current regulation affords the industry, the Department has concerns that this option of leaving the determination of refund-qualifying flight schedule time changes to individual airlines is not the best way to achieve this balance and may not be in the public interest. Complaints submitted to the Department's Office of Aviation Consumer Protection show that under the current regulation, airlines' policies differ in the amount of schedule time change required for a passenger to qualify for a refund. This causes consumer confusion and creates challenges for the Department in enforcing its consumer protection regulation. The Department seeks comments on whether continuing to provide airlines the flexibility to define significant change is a better option than the proposed approach (option 1) of defining a significant departure or arrival change to mean beyond three hours for domestic flights and six hours for international flights. Which option would better ensure consumers are treated fairly? Proponents of this approach are invited to articulate how to improve consistency across the industry when applying this standard to reduce compliance cost and consumer confusion.

A third approach considered by the Department is to define significant departure and arrival through adoption of a tiered structure based on objective factors that would be most likely to impact the level of consumer inconvenience and harm caused by the flight itinerary time change. For illustration purposes only, below is an example of a tiered standard based on the factor of total travel time as originally scheduled. As the original travel time (including total flight duration and layover time) is an objective pre-determined factor, the presumption is that the longer the original scheduled total travel time is, the more tolerant a consumer is to an itinerary change involving early departure or late arrival.

Original scheduled total travel time (measured from the schedule departure time of the first flight segment to the scheduled arrival time of the last flight segment)	Projected arrival delay or early departure as offered to passenger	Result
3 hours or less	2 hours or less	Refund Not Required.
	More than 2 hours	Refund Due.
3–6 hours	3 hours or less	Refund Not Required.
	More than 3 hours	Refund Due.
6–10 hours	4 hours or less	Refund Not Required.
	More than 4 hours	Refund Due.
More than 10 hours	5 hours or less	Refund Not Required.
	More than 5 hours	Refund Due.

An obvious negative aspect of this very specific standard is that it is more difficult for carriers to implement and for consumers to understand. This table also does not distinguish single-segment flight itineraries from multi-segment flight itineraries with connections. For itineraries with multiple segments, when factoring in the layover time, should the layover time be weighed the same as the actual flight duration time? For example, for refund purposes, should a multi-segment itinerary with a total travel time of 9 hours (6-hour total flight duration time and 3-hour layover time) be treated the same as a single-segment itinerary with a total travel time/flight duration of 9 hours? From the industry perspective, is adopting this type of tiered standard practical? What are the obstacles to implementing this? From the consumer perspective, does this type of tiered standard better reflect the inconvenience and disruption caused by a flight schedule change? Besides the total scheduled travel time, is there any other objective benchmark that should be considered as the basis of calculating whether a refund is due? For all commenters, if the idea of this table is workable, are the numbers proposed in the first two columns reasonable and practical?

ii. Change of Origination or Destination Airport

Besides departure and arrival times, most consumers are also concerned about origin and destination airports when booking a flight itinerary. In the event that a carrier-initiated change results in a passenger departing from or arriving at a different airport, it is likely that additional time and cost would be incurred by the passenger because consumers normally travel from and to airports that are most convenient to them. As such, the Department views that such a change in most cases would significantly reduce the value of the passenger's original ticket and, therefore, a refund would be due if the passenger no longer wishes to travel because of this change. The NPRM's proposal focuses on the change of the origination or destination airports and does not propose to require a refund if a carrier changes the connecting airport(s), as long as the change of connecting airport(s) does not cause early departure from the origination airport or delay in arriving into the final destination beyond the proposed hours. The Department invites comments on whether the change of origination or destination airports should entitle passengers to a refund and whether the change of connecting airports should also be included in this category. In this regard, we are especially interested to know the public's view on refund eligibility related to the change of a connection airport when the original booking included an extended period of layover time (*e.g.,* over 12 hours). The Department's concern is that in these

situations, passengers are more likely to choose a particular connection airport in the original booking for a particular purpose such as conducting business, visiting family, friends, or tourist sites at that location. Changing that layover point to another airport may materially affect the value of the trip to passengers. We also seek comment on whether further refining refund eligibility based on the length of layover time at the original connection airport is overly burdensome for carriers to implement.

iii. Increase of the Number of Connection Points

Although the NRPM does not propose to include the change of any connection airport as a ''significant change,'' the Department believes that adding to the number of connection points in an itinerary would significantly affect the value of a ticket because the more connection points, the more likely passengers are going to experience flight irregularities, complications, and disruptions, as well as mishandled checked baggage. Further, certain passengers such as families with young children may have a strong preference for non-stop flights because of the convenience and pay more for such flights. In fact, comparing airfares between two given points, itineraries with fewer connection points are generally priced higher than itineraries with more connection points. Under this proposal, a carrier changing a non-stop itinerary to a one-connection itinerary, or changing a one-stop itinerary to a two-stop itinerary, even if the change would not add to the total travel time or cause early departure or late arrival, would qualify as a ''significant change'' for which the passenger would be entitled to a refund upon request. The Department believes that this is a reasonable ground for refund eligibility because in those situations, passengers likely paid a higher fare for an itinerary with fewer connection points or no connection and, as the result of the carrier's change, received service of less value. On the reverse side, if the change of the itinerary results in a decrease in the number of connections, then no refund is required.

iv. Downgrade in the Class of Service

Another ground for refund eligibility proposed in this NPRM is a carrier-initiated downgrade in the class of service. Under the Department's oversales regulation, when a passenger on an oversold flight is offered accommodation or is seated in a section of the aircraft for which a lower fare is charged, the passenger is not entitled to denied boarding compensation but is entitled to an appropriate refund for the fare difference.[31] Here, the Department is proposing that when a passenger is downgraded to a lower class of service, either on the originally booked flight or on an alternative flight offered by the carrier, and the passenger declines the downgrade, a refund of the entire unused ticket price must be offered. The proposal is not limited to situations where the entire flight or the class of service the passenger was initially booked on was oversold. Downgrade of a passenger could occur for other reasons such as weight and balance or change of aircraft. It is the Department's view that a downgrade in the class of service significantly changes the passenger's ticket value and travel experience and is a reasonable ground for a refund. The Department seeks comments on whether a downgrade in the class of service should be considered a ''significant change of flight itinerary'' based on which a refund would be due, or whether the Department should require airlines to provide a refund of only the ticket price difference, and not mandate that carrier provide a full refund if the passenger does not accept the downgrade, similar to the existing oversales regulation.

v. Aircraft Downgrade

The change of aircraft is often required for operational reasons. For example, inbound flight delays or mechanical issues can lead to the use of substitute aircraft. While some aircraft substitutions result in significant changes in the passengers' travel experiences, most do not and would not result in affected passengers qualifying for a refund under this proposal. The Department considers a substitute aircraft of similar size that offers comparable amenities and does not substantially affect the passengers' overall travel experience to not be a ''significant change'' to the passenger's flight itinerary for refund purpose. The Department solicits comments on how to determine whether an aircraft downgrade is a significant change. Should the determination of whether an aircraft downgrade is a significant change be dependent on the person? For example, for a person who uses a wheelchair, a substituted aircraft having a smaller cargo compartment may mean that his or her battery-powered wheelchair cannot fit in the cargo compartment. On the other hand, a person without a disability may not be impacted by the substituted aircraft having a smaller cargo hold. Are there certain types of changes in amenities or air travel experience that should automatically be considered significant irrespective of the person? Should the Department's rule specify the types of change on the substitute aircraft that would result in passengers qualifying for a refund, or should the Department allow carriers to make this determination on a case-by-case basis? For passengers with disabilities, DOT proposes that the lack of certain disability accommodation features as the result of aircraft change, such as onboard wheelchair storage spaces and moveable armrests, which negatively impacts the particular passenger's travel experiences and access to services onboard, would be considered a ''significant change'' that entitles the passenger to a refund upon request.

(3) Airlines' Obligation To Provide Full Refunds (Including for Codeshare and Interline Flights)

Under this NRPM, when ticket refunds are due, airlines would be required to provide a full refund equal to the ticket purchase price and including government-imposed taxes and fees and carrier-imposed fees and surcharges (such as fuel surcharges), minus the value of any air transportation that is already used by the passenger. Similar to calculating the amount of denied boarding compensation in an oversales situation, which is based on the passenger's one-way fare for the affected flight(s), airlines should rely on established industry practices and guidelines to calculate the value of any used portion of the air transportation when providing refunds.

Additionally, consistent with the Department's longstanding view, it would be an unfair practice for airlines to charge a fee when issuing a refund of a ticket that is cancelled or significantly changed by the carrier. The Department is also proposing to require airlines to ensure that the terms or conditions in their contracts of carriage are consistent with the proposed regulation [32]—

[31] See 14 CFR 250.6(c).

[32] While 14 CFR part 260 would address refund requirements related not only to the ticket refunds that are the subject of this NPRM, but also the baggage and ancillary fee refunds proposed in the Department's July 2021 NPRM, we are proposing in this NPRM to add sections to the proposed part 260 that addresses only ticket refund requirements with one exception. This exception is the proposed regulatory text at 14 CFR 260.9, which would specify that a carrier's failure to ensure that its contract of carriage provisions is consistent with 14 CFR part 260 would be considered an unfair and deceptive practice. Comments on part 260 submitted in response to this rulemaking should solely focus on proposals related to ticket refunds aside from this one exception.

specifically that passengers will not be charged a fee when they do not accept an alternative itinerary following a carrier-initiated cancellation or significant change to their original itinerary. The Department believes that it is important to ensure that passengers are provided accurate information regarding their rights to a refund.

The Department has also considered airlines' obligations to provide refunds in codeshare and interline situations. For itineraries issued under one carrier's designator code, the carrier under whose code the ticket was issued (marketing carrier) would be responsible for providing the refund, regardless of whether the marketing carrier is also the operating carrier of the affected flight(s) or whether the marketing carrier is the carrier that cancelled or made significant changes to the flight itinerary. For itineraries that contain flight segments sold under more than one carrier's code (interline itineraries), the Department would require that the carrier that sold the ticket and collected the money from consumers be responsible for providing the refund even though not all flight segments were sold under that carrier's code. This is because that carrier would already have the information on consumer payment instruments, which facilitates issuing the refunds. The Department believes that this approach benefits consumers by streamlining the process for them to obtain refunds and expects that, with minimum burden, carriers will be able to develop a system with their codeshare and interline partners to ensure that refunds are provided timely. The Department seeks comments on the costs associated with establishing such a system for interline and codeshare partners to process refunds according to this proposal and whether there are technical obstacles that should be considered.

(4) Ticket Agents' Obligation To Provide Refunds, Fees, and Disclosure

The Department is proposing to require that ticket agents provide prompt refunds of airline ticket purchase prices or the air transportation portion of tour packages when an airline cancels or significantly changes a scheduled flight itinerary that the ticket agents sold directly to consumers, regardless of whether the ticket agent is in possession of the ticket purchase funds. Approximately 50% of tickets are sold by airlines directly to consumers, and the remainder are sold through ticket agents.[33] According to the Department's September 2021 report to the White House Competition Council on DOT's activities addressing airline ticket refunds associated with the COVID–19 pandemic,[34] approximately 17% of the 105,327 refund complaints the Department received between January 1, 2020 and June 30, 2021 are against travel agents and tour operators. The Department views this significant volume of refund complaints against ticket agents as an indicator that strengthening protections for consumers purchasing air transportation from ticket agents is needed.

According to representatives of ticket agents,[35] typically, when a consumer purchases an airline ticket through a ticket agent, the airline is the ''merchant of record'' recorded on the credit or debit card transaction, meaning the airline name appears on the consumer's card statement and the airline, not the ticket agent, receives the money via an intermediary financial settlement service. Similarly, in the usual process when a carrier-initiated cancellation or significant change to a flight occurs and the passenger requests a refund from the ticket agent, the ticket agent generally initiates an automated refund but the money flows directly from the carrier to the consumers, not through the ticket agent. Also, according to ticket agent representatives, depending on the ticket agents and airlines involved and the terms and conditions applicable, in a small percent of transactions, airlines would remit the consumer funds back to ticket agents, who then remit the funds back to consumers. During the initial months of the COVID–19 pandemic, many airlines suspended the automated process and refunds requested for tickets sold through ticket agents had to be processed manually. Further, ticket agents have stated to the Department that in many cases, they are not able to provide refunds to passengers because the agents do not have possession of the consumer funds. Consumer complaints to the Department have illustrated the difficulty that consumers sometimes have in obtaining a refund for a ticket purchased through a ticket agent when the consumer does not have the means to determine whether the airline or ticket agent needs to take action to process the refund and which entity is in possession of the consumer's money.

As illustrated in the preceding paragraph, one of the major issues the Department recognized in reviewing COVID–19 related refund complaints against ticket agents is that ticket agents often claimed that they did not have the funds consumers paid for air transportation because the funds have already been remitted to airlines. In many complaints, consumers expressed great frustration as they were forced to go back and forth between the ticket agent and the airline in an effort to chase down their refunds. The Department has considered placing the obligation of refund on the entity that is in possession of the consumer funds at the time the refund request is made, but does not propose this approach because which entity is in possession of the funds would not necessarily be clear to the consumer because multiple entities may be involved in the transaction process. Such uncertainty would result in additional costs, delay, and confusion to consumers.

To minimize consumers' burden, in this NPRM, the Department is proposing to revise the regulation prohibiting unfair or deceptive practices by ticket agents in 14 CFR 399.80 to require that retail ticket agents provide prompt refunds of the airfare or the air transportation portion of the cost of tour packages when an airline cancels or significantly changes a scheduled flight itinerary sold by a retail ticket agent, *i.e.,* ticket agents that sell directly to consumers. This requirement would cover retail ticket agents of all sizes, conducting business online or via brick-and-mortar stores transact directly with consumers. This requirement would not cover wholesale ticket agents who purchase bulk seats and resell them to other ticket agents, as well as Global Distribution Systems because these entities do not transact directly with consumers.

The proposed refund requirements for ticket agents applies to airfare or airfare-inclusive travel package transactions in which the ticket agents' identities are shown in the consumer's financial charge statements, such as debit or credit card charge statements, indicating that, from the consumer's perspective, the ticket agent is the ultimate recipient of the funds irrespective of whether the ticket agent is in possession of the consumer funds at the time of the refund request. Conversely, if, according to the financial statements provided to consumers, an airline is identified as the recipient of the consumer funds in a

[33] Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues, 79 FR 29970, 29975 (May 23, 3014).

[34] See, *Report to White House, Supra,* FN 16.

[35] See, *Presentation to the Advisory Committee On Aviation Consumer Protection (ACPAC) by Travel Technology Association—The Role of Online Ticket Agents in Airline Ticket Refund,* Dec. 2, 2021, *https://www.regulations.gov/document/DOT-OST-2018-0190-0034.* The Department received similar input from ticket agent representatives during meetings with staff of the Office of Aviation Consumer Protection on February 9 and 23, 2022.

transaction facilitated by a ticket agent, the airline would be under the obligation to provide the requested refunds without considering whether the airline is in possession of the consumer funds at the time of the refund request. The Department asks for public comments on whether it is reasonable to place the refund obligation on the entity that is the recipient of the funds as identified on the passenger's financial transaction record, without considering whether that entity is in possession of the consumer funds at the time the refund is requested. In relation to this question, the Department notes that, according to our understanding of the information provided by ticket agents, in most cases consumer funds move quickly through the intermediary entities so the entity that is the ultimate recipient of the funds would most likely be in possession of the funds when a refund request is made. To better assess the appropriate ways to place obligations on different parties, the Department is also interested in obtaining information regarding common practices and timelines for ticket agents to settle accounts with airlines.

The Department notes that the proposed approach focusing on the ultimate recipient of consumer funds without considering which entity is in possession of the funds at the time the refund is requested draws a clearer line for consumers to determine who would be responsible for issuing refunds by looking at their financial transaction records. According to some ticket agents, in most cases airlines are the ultimate recipients of consumer funds and would be able to issue the refunds directly to consumers without further delay. What are the situations in which ticket agents' involvement is necessary for airlines to issue refunds? What are the situations in which airlines need to remit the funds back to ticket agents instead of consumers? In those situations where the involvement of ticket agents is required, how can the Department's regulation ensure that ticket agents use their best effort to facilitate the prompt issuance of the refunds by providing all the information necessary for refund issuance to airlines in a timely manner, and by remitting the funds returned from airlines back to consumers? When action by both ticket agents and airlines is required for a refund to be issued, holding both the airline and the ticket agent jointly responsible may avoid potential delays for the airline to return the funds to the ticket agent if that step is needed to complete the refund process, or avoid the potential delays for ticket agents to provide the information needed for airlines to issue refunds. Should the regulation place the burden of issuing refunds on both airlines, as the recipients of funds, and ticket agents, as the consumer-facing entity in those situations? The Department also seeks input on any innovative solutions that we may not have considered to ensure the consumer is not sent back and forth between the ticket agent and the airline trying to obtain airline ticket refunds.

The Department acknowledges that for transactions in which a ticket agent would be responsible for issuing a refund if due, before issuing the refund, the ticket agent may need further information to verify whether a refund is due under the Department's regulation. In most situations where a refund is due because of airline cancellation or schedule changes (*e.g.,* early departure, late arrival, changes of airports), there would be sufficient information, such as airlines' publications or notifications sent to consumers, to confirm refund eligibility without contacting airlines. However, there may be situations in which a ticket agent does not have the direct information to make such a determination and may need to contact the airline to verify. For example, if a consumer claims that there is a downgrade of the class of service on a flight and the consumer declined travel under the downgrade, the ticket agent may not have access to the consumer's booking record to confirm such a downgrade. Airlines receiving a request from a ticket agent about a refund request should use their best efforts to verify whether the consumer requesting a refund would be eligible for a refund. The Department seeks comment on whether ticket agent's obligation to provide a refund within 7 days for credit card payments and 20 days for cash and other payments should not start until the ticket agent receives refund eligibility confirmation from an airline when the agent is unable to independently confirm the passenger's refund eligibility. If a ticket agent's obligation does not start until the ticket agent receives confirmation from an airline, how can the Department ensure that the airline acts promptly and the passenger is refunded in a timely manner if entitled to a refund?

Another issue the Department considered regarding refunds by ticket agents is the fee for booking travel or issuing a refund which ticket agents may charge and take out of the refunded portion before refunding the consumer. Many consumers filing complaints with the Department expressed dissatisfaction about ticket agents charging a fee for booking travel that the consumer ultimately did not take and/or charging a fee for the issuance of refunds. Another issue raised by consumers is the existence of the fees that the consumer was not aware of at the time of ticket purchase. Undisclosed fees would be considered a deceptive practice by the Department pursuant to 49 U.S.C. 41712 and 14 CFR 399.79.[36] Under this proposal, the Department clarifies that ticket agents are permitted to charge a service fee for booking travel or issuing refunds and to deduct those amounts from the refund provided to consumers, as long as the amount of the fee is on a per-passenger basis and the existence of the fee was clearly and prominently disclosed to consumers at the time they purchased the airfare. The Department is proposing to clarify that ticket agents are permitted to retain the service fee they charge for ticket issuance at the time of purchase in recognition that ticket agents are providing a service apart from airfare, such as specialized knowledge, access to limited availability fares, or tools to comparison shop across various airlines to find the best value for the consumer. Ticket agents have noted that regardless of whether the passenger ultimately travels, the fee for booking travel represents the cost of service already provided by ticket agents. The Department is proposing to clarify that ticket agents may charge a fee for processing refunds while airlines are not permitted to charge such a fee because unlike airlines, ticket agents do not initiate the cancellation or significant changes that result in a refund being due, nor do the ticket agents have any control over the cancellation or significant changes to a flight itinerary. The Department welcomes comments on whether it is reasonable to not permit airlines to charge a ticket purchase service fee or a refund processing fee for flights that the carrier cancelled or significantly

[36] Pursuant to 14 CFR 399.79, a practice is ''deceptive,'' within the meaning of 49 U.S.C. 41712, to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service. A ticket agent's failure to disclose that the booking fee charged at the time of reservation is nonrefundable when the ticket refund is due would likely mislead a consumer to reasonably conclude that the entire money paid for the ticket is refundable when ticket refund is due. Similarly, a ticket agent's failure to disclose the existence and the amount of a fee for issuing a refund is likely to mislead a consumer to reasonably believe that no such a fee would apply when ticket refund is due. Failing to provide either disclosure would be an omission of material information that may affect the consumer's purchase decisions.

changed while allowing ticket agents to do so.

(5) Forms of Refund

In this NPRM, we propose to allow airlines and ticket agents to choose whether to refund passengers by returning the money in the original form of payment or by providing the refund in cash or a form of cash equivalent.[37] Typically, airlines and ticket agents refund passengers in the original form of payment, *i.e.,* whatever payment method (credit card, bank account) that the individual used to make the payment. Carriers may choose to continue to do so but also have the flexibility to refund passengers in cash, a check, a prepaid card, or an electronic transfer to the passenger's bank account or other digital payment methods such as PayPal or Venmo. The Department emphasizes that under this proposal, a carrier- or ticket agent-issued travel credit or voucher or a store gift card is not considered a cash equivalent form of payment because these forms of compensation are not widely accepted in commerce. Further, the Department considers that when a carrier or ticket agent issues a prepaid card, any maintenance or usage related fees should be prepaid into the card by the issuer in addition to the full amount of refund that is due.

By expanding the scope of refund forms, the Department's proposal intends to provide consumers, carriers, and ticket agents more flexibility in issuing and receiving refunds. Consumers would have more flexibility to choose the form of refund payments offered by carriers that better suit their needs. For example, this proposal would be beneficial to consumers in situations where a credit card account used to pay for the ticket has been closed. Carriers and ticket agents also would benefit from the flexibility by saving costs from consolidation of refund forms and increasing efficiency. The Department is interested to know whether this proposal would be beneficial to consumers, carriers, and ticket agents as intended and whether there are any unintended negative impacts. Further, the Department's current refund timeframes (*i.e.,* seven days for credit card purchases and 20 days for cash and other forms of purchases) are based on the form of payment used for the purchase. The Department is interested in comments on whether these timeframes are appropriate and should continue to apply regardless of the form of refund. For example, if a consumer purchased a ticket with a credit card and the carrier offers and the consumer accepts a refund by check, should the carrier have 7 or 20 days to issue the check?

(6) Option To Offer Travel Vouchers, Credits and Other Forms of Compensation for Cancelled or Significantly Changed Flights

The Department proposes to allow airlines and ticket agents to *offer* but not require other compensation choices such as travel credits or vouchers and store gift cards in lieu of refunds. The Department recognizes that while a refund in cash or a cash equivalent form of payment would be preferred by many passengers, some passengers may have travel or purchase plans in the foreseeable future and would prefer to receive travel credits or vouchers or store gift cards, which airlines and ticket agents may offer, as an incentive, at a dollar value of greater than or equal to the refund amount. Allowing airlines and ticket agents this flexibility enables them to preserve cash and benefits consumers by allowing them more choices of compensation for interrupted travel plans. The goal is to ensure that passengers, at a minimum, have the choice of receiving cash or a cash equivalent refund, while allowing airlines, at their discretion, to offer other choices that may better suit the needs or preferences of some passengers.

Under the Department's proposal, the option for carriers and ticket agents to offer compensation other than refund of cash or cash equivalent when a carrier cancels or makes a significant change to a flight itinerary must not be misleading with respect to the passengers' rights to receive a refund. Specifically, while carriers and ticket agents are free to offer these options, information provided by the carriers and ticket agents to the public must not lead consumers, acting reasonably under the circumstances, to believe that these options are their only choices and that they are not entitled to a refund. For example, when a carrier agent discusses the options consumers may have after the carrier cancels or significantly changes a flight, the agent's failure to clearly disclose that consumers have the option to receive a refund would be a misleading communication. Consistent with the prohibition against deceptive practices under 49 U.S.C. 41712 and the Department's rule defining deceptive practices in 14 CFR 399.79, it would be unlawful for carriers or ticket agents to provide misleading information to consumers affected by cancelled or significantly changed flight itineraries regarding their eligibility to a refund, a material matter that is likely to affect a consumer's conduct or decision with respect to a product or service.

Furthermore, when airlines and ticket agents offer compensation other than refunds to consumers affected by cancelled or significantly changed flight itineraries, the Department's proposal would require airlines and ticket agents to clearly disclose any material restrictions, conditions, and limitations on the compensations they offer, so consumers can make informed choices about which compensations and refunds that would best suit their needs. These material restrictions, conditions, and limitations would include, among other things, the validity period, black-out dates, administrative fees, advance purchase requirements, and capacity restrictions applicable to travel credits or vouchers, and the validity period, administrative and maintenance fees, and purchase restrictions for gift cards.

IV. Providing Travel Vouchers or Credits to Passengers Who Are Unable or Choose Not To Travel Due to Concerns Related to a Serious Communicable Disease; Refund Requirement for Airlines and Ticket Agents Accepting Significant Government Financial Assistance Related to a Public Health Emergency

A. Background

Since the enactment of the Airline Deregulation Act of 1978 that liberalized the airlines' ability to set ticket prices based on, among many other factors, market demands, airlines have developed many innovative ways to price air travel products tailored to different consumer needs. The concept of ''booking classes'' encompasses categories of tickets that are priced differently based on the levels of flexibility a consumer has to change or cancel the tickets. Tickets in the booking class labeled ''non-refundable'' generally would be priced the lowest with the most restrictive conditions applicable to consumer-initiated changes to the booking. Airlines' terms and conditions for non-refundable tickets often specify that the passenger

[37] The Department's existing interpretation of ''cash equivalent'' in the context of denied boarding compensation (DBC) payments provides that the only permissible cash equivalent a carrier may offer is a check. The Department has initiated a rulemaking to explore additional means of payments that should be considered as ''cash equivalent'' in light of the modernization of payment methods, such as a prepaid card or electronic funds transfer. See, *Notice of Proposed Rulemaking, Modernizing Payment of Denied Boarding Compensation,* 84 FR 11658, March 28, 2019. The Department plans to issue a final rule in 2022. Consistent with the Department's proposal in that NPRM, this NPRM also proposes that prepaid cards and electronic fund transfers, among other things, should be considered as ''cash equivalent'' for the purpose of refund issuance.

would not be eligible to receive any form of compensation, including refunds, credits, or vouchers, should the passenger choose not to travel. As a goodwill or customer service gesture, many airlines sometimes provide travel credits or vouchers, after evaluating the situation on a case-by-case basis, to passengers who changed their travel plans due to unexpected events, such as medical or family emergencies, including passengers who have contracted a serious communicable disease and decided to not travel to protect the health of others. Passengers accepting these credits or vouchers then would have the flexibility to reschedule their travel for a later date but may at times be subject to a rebooking fee.

Approximately 20% of the refund complaints that the Department received from January 1, 2020 to June 30, 2021, involved instances in which passengers with non-refundable tickets chose to not travel because of considerations related to the COVID–19 pandemic.[38] Given the impact the pandemic has had on passengers' travel plans, most airlines that fly to, within, and from the United States have offered travel credits or vouchers, despite the lack of a regulatory mandate, in situations where a passenger states that he or she was unable to travel or advised not to travel due to COVID–19 related reasons. However, consumers have complained to the Department that the airline vouchers and credits that they received have inadequate validity periods considering the trajectory and duration of the pandemic. Some complainants informed the Department that they experienced great difficulties in receiving and redeeming travel vouchers issued by or through ticket agents. Others have expressed frustration that the vouchers are limited to booking future travel with the same routing as their original bookings. Consumers believe these types of restrictions significantly reduce the value of the credits or vouchers. Many consumers have also asked that refunds be provided to them instead of vouchers and credits. Consumer organizations and certain members of Congress [39] have urged airlines to provide non-expiring credits or refunds in situations where the consumer does not travel due to COVID-related reasons.

During the December 2021 ACPAC public meeting, participants also discussed the issue of airline ticket refundability when consumers cancel flights due to public health concerns or government restrictions.[40] With the COVID–19 pandemic as a background, consumer advocates stated that consumers should not be denied refunds when they are unable to travel due to government restriction, health concerns, and cancelled events. Airline representatives focused on the public benefits of having and maintaining the nonrefundable fare product in the marketplace and cautioned that overregulation in this area may result in the elimination of that lower-priced fare product.

The Department is of the view that a regulation is needed to ensure consumers are consistently treated fairly when they are unable or advised not to travel due to reasonable concerns related to a serious communicable disease. The Department considers a consumer who does not travel because he or she has contracted a serious communicable disease or has been advised by a medical professional or determines consistent with public health guidance not to travel because he or she is likely to have contracted such a disease to be acting reasonably. Consumers would also be acting reasonably if they do not travel, during a public health emergency, to protect themselves from a serious communicable disease based on restrictions, advisories, and guidance issued by CDC, comparable agencies in other countries or WHO. Also, a consumer may be unable to travel in relation to a serious communicable disease because of restrictions imposed by a governmental entity (*e.g.,* stay at home order, border closure).

This NPRM proposes to mandate that airlines and ticket agents provide credits or vouchers under certain circumstances and specifies the form and nature of these credits or vouchers. It also proposes that U.S. and foreign air carriers and ticket agents provide refunds during a future public health emergency, in lieu of travel vouchers or credits, to consumers if the carrier or ticket agent receives significant government financial assistance, as determined by the Department, regarding the public health emergency. The Department believes that a regulation defining the baseline of accommodations to non-refundable ticket holders and identifying the specific circumstances that would give rise to the need to accommodate passengers when they cancel or postpone their travel would greatly enhance consumer protection. Without such requirements, airlines and ticket agents may have different interpretations of what types of event would be sufficient to justify a deviation from the non-refundable terms of a ticket. Such application of interpretations may result in not only increased consumer confusion and frustration, but also increased administrative cost to airlines and ticket agents for handling customer service requests and complaints from consumers with different perspectives.

Aside from enhanced protection of consumers' financial interests, the Department believes that a regulation providing protection to non-refundable ticket holders who are unable to travel by air due to reasonable concerns related to a serious communicable disease is needed to promote and maintain a safe and adequate aviation transportation system. 49 U.S.C. 41702 requires U.S. carriers to provide safe and adequate interstate air transportation and 49 U.S.C. 40101(a) directs the Department in carrying out aviation economic programs such as regulations under 49 U.S.C. 41702 and 41712 to consider certain enumerated factors as being in the public interest. These factors include ''the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices'' and ''preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation,'' as well as ''assigning and maintaining safety as the highest priority in air commerce.'' Large scale public health emergencies such as the COVID–19 pandemic often lead to a significant loss of human life and profoundly impact how people live and behave. This includes a general reluctance to travel during a pandemic, particularly among certain sectors of the population, such as the elderly, individuals with certain health conditions that may place them at greater risk of serious illness if they contract the disease, or those who are their caregivers. These consumers face heightened risks when traveling during a pandemic because of the potentially more severe consequences of them contracting the communicable disease. Nevertheless, some may take risks and travel if they have expended funds on airline tickets that they are unable to recoup. Similarly, individuals who have contracted a serious communicable disease such as COVID–19 or have been advised by a medical professional or determine consistent with guidance

[38] See, *Report to the White House Competition Council, p. 11.*

[39] See, *https://www.markey.senate.gov/imo/media/doc/flights_credits_all_airlines_combined.pdf.*

[40] See, Advisory Committee for Aviation Consumer Protection (ACACP) Docket: *https://www.regulations.gov/docket/DOT-OST-2018-0190.*

issued by a public health authority not to travel because they are likely to have such a disease may travel, rather than self-quarantine as may be suggested by government-issued advisories, if they are unable to recoup the cost of their ticket. This NPRM would protect passengers' financial interests in airline tickets that they purchased when they are unable or choose not to travel due to reasonable concerns about a serious communicable disease, which would encourage them to postpone travel and avoid potential harm to themselves and others in the aviation system. The Department seeks comments on whether requiring airlines and ticket agents to issue travel credits or vouchers to non-refundable ticket holders in these situations and refunds when entities receive government assistance is an appropriate way for the Department to promote safe and adequate air transportation.

Proposals

(1) Travel Credits or Vouchers to Passengers Who Are Restricted or Prohibited From Traveling by a Governmental Entity in Relation to a Serious Communicable Disease Whether or Not There Is a Public Health Emergency

Under this NRPM, airlines and ticket agents would be required to provide non-expiring travel credits or vouchers, instead of refunds except under limited circumstances as described in paragraph (10) of this section, to a non-refundable ticket holder who is restricted or prohibited from traveling by a governmental entity for reasons related to a serious communicable disease. A consumer may be restricted or prohibited from travel by air through directives such as government issued ''stay at home'' orders or ''shelter in place'' orders. Governments may also institute border closure or entry restrictions for certain types of passengers. The governments imposing these restrictions may be a foreign government or the U.S. government at the Federal, State, or local level. The Department believes that it is fundamentally unfair to allow airlines and ticket agents to enforce the non-refundability of tickets on consumers under these types of circumstances, which are out of the consumers' control.

Under this proposal, consumers would be entitled to a non-expiring voucher or credit if, after the consumers purchased airline tickets, a government order was issued to prohibit a passenger from leaving the place of origination or entering into the place of transition or destination or if the government order renders the passenger's travel meaningless. For example, if a passenger plans to travel to a vacation destination and stay for a week but after the passenger purchased his or her ticket the government of the destination city imposes a seven-day quarantine requirement for all arriving passengers, the purpose of this passenger's travel would be rendered meaningless. In these types of situations, we are proposing that the passenger be entitled to cancel the travel and receive a travel credit or voucher. On the other hand, passengers would not be entitled to a travel credit or voucher if they simply failed to exercise due diligence to ensure that all conditions for travel imposed by the governments of the departure, transit, or arrival locations are met. For instance, a passenger who failed to obtain a negative test result for a communicable disease within 48-hour of departure if required by the government of destination would not be eligible for a travel credit or voucher under this proposal. Further, the Department's proposal would only cover government-issued travel restrictions or prohibitions in relation to a serious communicable disease. This NPRM does not address passengers subject to border closure or entry restriction for reasons not related to a serious communicable disease, such as security reasons. The Department expects that many instances would be analyzed on a case-by-case basis to determine whether a passenger would be eligible to receive a travel credit or voucher under this proposal. We welcome comments on whether the proposed requirement for a non-expiring voucher or credit strikes the right balance given that the travel restrictions are out of the airlines' and ticket agents' control and the differential economic impact of a refund mandate versus a travel credit or voucher on airlines and ticket agents in these circumstances.

(2) Travel Credits or Vouchers to Passengers Who Are Advised or Determine Consistent With Public Health Guidance Not To Travel To Protect Themselves From a Serious Communicable Disease During a Public Health Emergency

The NRPM proposes that, when there is a public health emergency, airlines and ticket agents must provide non-expiring travel credits or vouchers to non-refundable ticket holders who are advised by a medical professional or determine consistent with public health guidance issued by the CDC, comparable agencies, or WHO not to travel by air to protect themselves from a serious communicable disease. Under this NPRM, for airlines to incur this obligation, the non-refundable ticket holder must have booked the ticket before the beginning of the public health emergency and the travel date must be during the public health emergency.

The NPRM further clarifies that a ''public health emergency,'' as used in this proposed regulation, is defined in the U.S. Department of Health and Human Services (HHS) regulation addressing measures taken by CDC to quarantine or otherwise prevent the spread of communicable diseases, 42 CFR 70.1.[41] The Department believes that adopting HHS's definition of public health emergency is appropriate here to capture large-scale outbreaks of a serious communicable disease that would significantly impact air travel on a regional, national, or global basis, during which the Department's regulation is warranted to ensure a basic level of protection for air travelers affected by the events.

This NPRM is intended to extend broad protection to consumers scheduled to travel by air to, within, and from the United States during a public health emergency and are advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel due to a health condition that makes the traveler particularly vulnerable to the disease. In recognition of the significant economic impact of public health emergencies, the Department is proposing to require airlines and ticket agents to provide non-expiring vouchers and credits (and refunds under the limited circumstances

[41] At the time of the publication of this NPRM, the definition for ''*Public health emergency*'' in 42 CFR 70.1 is: (1) Any communicable disease event as determined by the Director with either documented or significant potential for regional, national, or international communicable disease spread or that is highly likely to cause death or serious illness if not properly controlled; or (2) Any communicable disease event described in a declaration by the Secretary pursuant to 319(a) of the Public Health Service Act (42 U.S.C. 247d (a)); or (3) Any communicable disease event the occurrence of which is notified to the World Health Organization, in accordance with Articles 6 and 7 of the International Health Regulations, as one that may constitute a Public Health Emergency of International Concern; or (4) Any communicable disease event the occurrence of which is determined by the Director-General of the World Health Organization, in accordance with Article 12 of the International Health Regulations, to constitute a Public Health Emergency of International Concern; or (5) Any communicable disease event for which the Director-General of the World Health Organization, in accordance with Articles 15 or 16 of the International Health Regulations, has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease.

as described in paragraph (10) of this section) to these passengers. The Department believes that this strikes the right balance between protecting consumers on the one hand and preserving and ensuring a healthy air transportation industry on the other. The Department notes that although the proposed requirement may result in a large amount of credits and vouchers owed to consumers on carriers' accounting records, it would not result in an immediate reduction of the carriers' revenues. The Department believes that the proposal, which would mandate non-expiring credits and vouchers for consumers to use in the future instead of refunds, would enable airlines and agents to better manage their liquidity and reduce the risk of bankruptcies.

The Department welcomes comments regarding whether it is reasonable to mandate that airlines and tickets agents issue non-expiring travel credits and vouchers to passengers who have purchased their airline tickets before the declaration of a public health emergency and are advised not to travel during a public health emergency to protect themselves from a serious communicable disease. As stated earlier, during the COVID–19 pandemic, many airlines have voluntarily provided vouchers to consumers who were unable or chose not to travel because of health concerns related to the pandemic. These vouchers, however, were valid only for specified time periods and had other conditions and restrictions associated with them. We are interested in comments related to obstacles airlines and ticket agents may face when voluntarily providing travel credits and vouchers to consumers who could not or chose not to travel during the pandemic. Also, we solicit comment on whether airlines and ticket agents should be required to provide consumers more flexibility on the use of vouchers by allowing the use of vouchers by travelers other than the traveler named in the original ticket or use for travel on different interline partners. We are also interested in feedback regarding any difficulties that consumers may have experienced in redeeming credits and vouchers issued to them and what the Department should consider in the proposed regulation to address or resolve these difficulties. With respect to the scope of qualified consumers, the Department's proposal would be limited to consumers who have purchased their tickets before the public health emergency. The Department recognizes that this limitation would not extend the proposed enhanced financial protection to consumers who purchase tickets during a public health emergency but later find out that their condition or situation has changed such that it results in a reluctance or inability to travel. For example, a consumer may have developed a new health condition after having purchased the ticket during a public health emergency and the new health condition makes the consumer more susceptible to the serious communicable disease. Another example is if the airline reduces the safety measures in place to protect consumers from contracting this serious communicable disease. The Department seeks comments on whether the proposed travel credit/voucher issuance requirement should cover these consumers or if it would be preferable to have a bright line rule that the protections are limited to those consumers who purchased their airline tickets before the declaration of a public health emergency.

(3) Travel Credits or Vouchers to Passengers, Who Are Advised or Determine Consistent With Public Health Authority Guidance Not To Travel Irrespective of a Public Health Emergency, Because the Passenger Has or May Have a Serious Communicable Disease and Would Pose a Direct Threat to Health of Others

Beyond widespread infections of a communicable disease that lead to a ''public health emergency'' declaration by relevant governing entities, this NPRM also addresses incidents of passengers who are advised not to travel because they have or may have contracted a serious communicable disease and, to protect the health of others, the passengers do not take their scheduled flight. These incidents may occur regardless of whether there is a public health emergency. The NPRM proposes to require airlines and ticket agents to provide non-expiring vouchers and credits, instead of refunds, in these types of incidents, unless the incidents occur during a public health emergency and the airline or ticket agent has received significant financial assistance from their home country as described in paragraph (10) of this section. However, the Department seeks comment on other alternatives.

It is the Department's understanding that airlines in general would allow and prefer that a passenger with a serious communicable disease in the contagious stage not travel, and airlines would likely grant an exception from the tickets' non-refundability to allow the passenger to reschedule travel. In fact, if a passenger carrying a serious communicable disease wants to travel, airlines would likely take steps to ensure that the health of others in the flight is protected. Such steps include conducting an assessment regarding whether the passenger would pose a direct threat to the health of others, requesting medical documentation, taking precautions to prevent the transmission of the disease in the cabin while transporting the passenger, or if appropriate, denying boarding. In the event that a passenger who has a serious communicable disease wishes to postpone travel, the Department believes that it would be in the interest of carriers, passengers and the public at large for the travel to be postponed. This would protect the health of the public and prevent the further transmission of a serious communicable disease. The Department notes that this proposal only intends to cover passengers who have or are likely to have contracted a serious communicable disease, as determined by current medical knowledge (*e.g.,* directives issued by public health authorities such as CDC) or a medical professional treating the consumer.

This proposal defines a serious communicable disease to mean a communicable disease as defined in 42 CFR 70.1 that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment. The analysis of whether a communicable disease is ''serious'' under this NPRM is similar to the analysis of ''direct threat'' under the Department's disability regulation.[42] Under that regulation and this proposal, carriers would consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment. Communicable diseases that are readily transmissible but do not result in significant health consequences (such as the common cold) or those carrying significant health consequences but are not readily transmissible (such as AIDS) are not ''serious'' communicable diseases for the purpose of this proposal. Conversely, the SARS–CoV–2 virus that causes the COVID–19 infection would be considered a ''serious'' communicable disease because it is readily transmissible in the aircraft cabin and would likely cause significant health consequences in many people. The Department solicits comment on its definition of a serious communicable disease. Is it sufficiently clear to the regulated entities and the public as to which types of

[42] See 14 CFR 382.21(b)(2).

communicable diseases would and would not be considered serious? Is there a better way to define serious communicable disease?

The Department, although not a public health agency, believes that using economic tools as incentives to discourage passengers who would pose a risk to the health of others from traveling is consistent with its mission of ensuring that the air transportation system is safe for the public. The Department notes that requests from passengers who are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease infection should be infrequent and place little burden on the airlines outside of the context of public health emergencies. The Department solicits comment on the potential for abuse if it adopts, at the final rule stage, its proposal that whether or not there is a public health emergency airlines provide credits or vouchers to individuals who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious contagious disease. The proposed rule would allow airlines to require such persons to provide documentation from a medical professional and/or guidance issued by CDC, comparable agencies, or WHO that the consumer should not travel by commercial air transportation. The Department seeks comment on whether this is sufficient to prevent abuse.

Are there concerns about individuals falsely stating that they have serious communicable disease? If so, how should the Department address these concerns? Are there ways to distinguish between consumers who, after considering public health advisories or medical professional opinions, genuinely determine that they may have contracted a serious communicable disease, and consumers who want to take advantage of the ability to claim vouchers or credits without a real suspicion of having contracted a serious communicable disease? Should the requirement for airlines to provide a credit or voucher only be triggered if the consumer has instructed by a medical professional or public health authority that he or she must quarantine or isolate and therefore cannot fly as opposed to consumers who are advised or determine consistent with public health guidance that they have or may have contracted a serious communicable disease?

In addition, should the Department consider alternatives to requiring airlines to offer vouchers or credits to consumers who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have contracted a serious communicable disease? If so, are there other actions airlines could take to protect consumers from the harm of losing the value of their tickets? For example, would an airline waiver of change fees be sufficient protection? Given the COVID–19 pandemic, many airlines have suspended change fees for most of their tickets allowing passengers to adjust travel schedules for any reason without contacting the airline. Some airlines have also created an economy class of tickets that allow for full refunds when the passenger cancels before departure under most circumstances. Should the Department require airlines to allow consumers to change their tickets without charging a fee instead of providing them non-expiring vouchers or credits? If so, should such a requirement apply to all classes of tickets, regardless of airline change fee policies? In addition, should the Department place additional requirements on airlines, such as allowing consumers to change the ticket multiple times or to keep the ticket open so that the consumer could select the new flight at a later date? The Department welcomes comments on its proposal as well as suggestions on alternative methods to protect consumers who are advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have a serious communicable disease.

(4) Supporting Documentation To Be Provided to Airlines or Ticket Agents

The Department is cognizant of the airline industry's longstanding ticket pricing practice that applies restrictions and fewer flexibilities to less expensive ticket categories. While proposing a regulation to ensure that passengers who have legitimate reasons to postpone travel are accommodated, the Department believes that it is reasonable for airlines and ticket agents to implement safeguards to prevent abuse. Under this proposal, airlines and ticket agents would have the option to assess the validity of passengers' reasons to postpone travel before issuing travel vouchers, credits, or refunds to them.

To determine whether a passenger's ability or willingness to travel is impacted due to government restrictions related to a public health emergency, this proposal allows airlines and ticket agents to require passengers to present materials to demonstrate that government requirements are restricting their air travel. These requirements could include a quarantine isolation order or a border closure notice or entry restriction issued by a government. A local stay at home order that restricts local travel may also be a reasonable ground if it impacts the passenger's entry or exit of the local vicinity through air travel. To the extent that a passenger is asserting an inability or unwillingness to travel to protect himself or herself or others from a serious communicable disease, airlines and ticket agents would be permitted to request that the passenger provide a current written statement from a licensed medical professional attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation. A general ''fear'' that a passenger may have about traveling when there is a public health emergency declared would not be sufficient to entitle that passenger to a travel credit or voucher.

The Department seeks comments on the adequacy of types of information that the Department would allow airlines and ticket agents to seek from passengers requesting a travel credit or voucher for future travel. If a public health emergency has been declared and the reason that the passenger is seeking to postpone travel is related to risk to his or her health, should the Department specify that the medical documentation explain the reason that the passenger is more susceptible than others to contracting a serious communicable disease during air travel? What, if any, privacy concerns are there with allowing airlines and ticket agents to seek information from passengers related to their health? What are possible ways to resolve these concerns? Are there ways to reduce or prevent unscrupulous passengers from falsely claiming that they have a serious communicable disease that prevents them from traveling without airlines and ticket agents requesting documentation from passengers about their health? If CDC, WHO or other comparable entities recognize certain groups as being more vulnerable to contracting a serious communicable disease, then would it be sufficient for the medical documentation to affirm that the passenger belongs in one of these groups? For example, in a travel advisory published by the WHO regarding COVID–19,[43] WHO advises

[43] *https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-travel-advice-for-the-general-public.*

that any person in high-risk groups—including those over the age of 60, those with chronic illnesses, and those with underlying health conditions, should consider postponing travel to areas where COVID–19 is widespread. Although technically members of this vulnerable group may still travel, the potential serious health risk from contracting the disease through travel is a material concern that could affect the person's willingness to travel.

The Department seeks comments regarding whether it is reasonable to require airlines and ticket agents to consider and accept a broad scope of ''travel restrictions, advisories, and guidance'' issued by CDC, comparable agencies in other countries, and WHO, to support a consumer's assertion that it is not safe for them to travel. Are ''advisories and guidance'' too broad and vague for consideration? For example, CDC's current travel advisory system includes three categories applicable to different countries in the world: Warning Level 3—Avoid all non-essential Travel; Warning Level 2—Practice enhanced precautions; and Warning Level 1—Practice usual precautions. In this example, which Warning Level(s) should be considered as a reasonable level of restriction with respect to allowing non-refundable ticket holders to receive a travel credit?

The Department notes that there are two categories of evidentiary documentation airlines and ticket agents are permitted to request as a condition for issuing the travel credits or vouchers under this proposal—one is government-issued travel restrictions, guidance, advisories applicable to the public or sectors of the public or quarantine orders/isolation advisories applicable to the individual passenger; the other is a written statement by a licensed medical professional issued to the individual passenger. The Department notes that, depending on the reason based on which a passenger is seeking to postpone travel, not all passengers should be required to provide both categories of documentation. For example, a passenger seeking to postpone travel due to a compromised immune system may be required to provide both the government advisory applicable to travelers with a compromised immune system and a written statement by the passenger's doctor attesting that the passenger has a compromised immune system. On the other hand, a passenger seeking to postpone travel due to the destination country's entry restriction should not be required to provide any medical documentation. We expect airlines and ticket agents to use reasonable judgment to determine what type(s) of documentation is necessary and reasonable to request. We ask whether the proposal that medical documentation be dated within 30 days of the initial departure date is reasonable and appropriate.

Finally, the Department recognizes that many passengers who sought to defer travel during the COVID–19 pandemic may not fall under one of the referenced categories. These are passengers who do not have a health condition themselves but are the caregivers of persons with a health condition, either through family relationship or employment. The Department seeks comments on whether this category of passengers should be included in the protection proposed in this NPRM, and if so, what are the documentation carriers and ticket agents may request, that are credible and reasonable. Further, the Department seeks comments on whether this proposal should also cover both passengers who would have difficulty traveling alone and their travel companions if only one of them qualifies for a voucher or refund. For example, if a qualified passenger is traveling with a minor, should the airline also be required to provide a voucher or refund to the minor even if the minor would not otherwise qualify?

(5) Entities Responsible for Issuing Travel Credits or Vouchers

Some of the complaints filed with the Department against ticket agents regarding the issuance of credits and vouchers indicate that they were issued by airlines through the ticket agents, and other were issued by the ticket agents. Some of the airline vouchers would limit the redemptions to bookings with the same ticket agents while others did not have such a restriction. As with issuing refunds for flights cancelled or significantly changed by airlines, for passengers who booked air travel with ticket agents requesting a travel credit due to public health concerns, the Department's proposal would place the obligation of issuing the credits or vouchers on the entity that ''sold'' the tickets (*i.e.,* identified in the consumer's ticket purchase financial statement). However, the Department is open to suggestions on whether the entity obligated to issue credits or vouchers should be determined based on other criteria that provide consumers more certainty in receiving the credits and more flexibility in redeeming the credits. Specifically, should airlines be solely responsible for issuing credits or vouchers because they are the direct providers of the air transportation paid for by consumers and the ultimate recipients of the consumer funds? If so, how can the Department best ensure that the credits and vouchers are issued appropriately and promptly by the airline when the airline is not a principal in the original transaction? What role and responsibility should be placed on ticket agents to facilitate the issuance of credits or vouchers by airlines when the ticket agents are the principals of the initial transactions? In addition to answers to these specific questions, the Department also seeks general information on the transactions between airlines and ticket agents that would have an impact on determination regarding how travel credits and vouchers are issued for non-refundable ticket holders who could not or choose not to travel due to public health concerns.

(6) Validity Period for Travel Credits or Vouchers

The Department is proposing to require that airlines and ticket agents provide non-expiring credits or vouchers for future travel to qualifying consumers. The Department has received numerous complaints from customers concerned that the airline vouchers or travel credits provided to them would expire before they are able to use them. These consumers pointed out that given the uncertainty regarding how the COVID–19 pandemic would progress, government travel restrictions in place, and specific health concerns related to flying during the pandemic, they do not expect to travel by air within the validity periods of the credits or vouchers. The validity periods for credits and vouchers generally range from 90 days to two years. The two-year validity period is a result of extensions to the initial validity periods by certain airlines and ticket agents as the pandemic has continued far longer than originally anticipated.

Based in part on the concerns expressed in these complaints, the Department has tentatively decided that the unpredictability of a serious communicable disease justifies a proposed requirement for airlines and ticket agents to provide credits or vouchers for future travel that do not have an expiration date. These non-expiring vouchers or credits would be provided to consumers who purchase tickets but are restricted or prohibited from traveling by a governmental entity (*e.g.,* as a result of a stay at home order, quarantine period, entry restriction, or border closure) due to concerns of a serious communicable disease; are unable or advised not to travel during a

public health emergency to protect themselves from a serious communicable disease consistent with restrictions, advisories and guidance issued by CDC, comparable agencies in other countries, or WHO; or are unable or advised not to travel because they have contracted a serious communicable disease and their condition would pose a threat to the health of others. A non-expiring voucher or credit would provide consumers greater flexibility and assurance that the vouchers or credits would be available when they are ready to travel.

The Department welcomes comments on whether an indefinite validity period for credits or vouchers issued under this proposal is reasonable, and if not, the reason that it is unreasonable and what a reasonable minimum validity period should be. For example, when there is not a public health emergency, for travel credits or vouchers issued to passengers who have been advised by a medical professional or determine consistent with public health guidance not to travel because they have or may have such a disease, is a validity period of one year sufficient to ensure that passengers have ample opportunities to use the credits or vouchers? For travel credits or vouchers issued due to a public health emergency, should the Department require that they be valid for one year, or for the duration of the public health emergency, whichever gives the longer validity period? Commenters are encouraged to provide information on what challenges airlines and ticket agents may face when accommodating the redemptions of travel credits and vouchers that have no expiration dates.

(7) Service Fee by Ticket Agents and Airlines for Processing Credits and Vouchers; Disclosure

Similar to the proposal regarding ticket agents' issuance of airfare refunds when refunds are due, the Department is proposing to allow airlines and ticket agents to charge a processing fee for the issuance of credits or vouchers to non-refundable ticket holders when consumers' travel plans are affected by concerns related to a serious communicable disease, as proposed in section 259.5(b)(6). The Department is of the tentative view that ticket agents and airlines should be allowed to impose a processing fee if the fee is on a per passenger basis and appropriate disclosures were made to the consumer prior to the consumer purchasing the airline ticket because neither the airline or ticket agent initiated the change that is resulting in the need for a credit or voucher. To ensure transparency and fair treatment of consumers, the existence of the fee must be clearly and conspicuously disclosed to consumers at the time of ticket sale. The Department welcomes comments on whether it is reasonable to permit airlines and ticket agents to charge a processing fee for the issuance of travel credits or vouchers. If airlines and ticket agents should be permitted to charge a fee, what type and manner of disclosure would be sufficient to avoid consumer confusion for fees applicable for these specific circumstances?

(8) Value of Credits and Vouchers; Disclosure of Reasonable Conditions, Limitations, and Restrictions on the Use of Credit or Voucher

The NPRM proposes that the travel credits or vouchers issued to qualified consumers be ''a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges).'' The Department is also proposing that the credits or vouchers include any prepayment of unused ancillary services such as baggage fees or seat selection fees. The rationale for including the fees for ancillary services in the credit or voucher given to consumers is that those services have not been provided by the carrier.[44] On the other hand, under this proposal if the required disclosures have been provided before the consumer purchased the airline ticket, ticket agents would be allowed to deduct, from the credit or voucher given to consumers their service charge, if any, for issuing the original ticket because that service has already been provided. DOT further believes the fee deduction is appropriate because the consumer's flight is operating as scheduled and neither the airline or ticket agent initiated or had control over the change that is resulting in a credit or voucher being provided. We invite comments on whether allowing ticket agents to retain the fees collected for service already provided is reasonable and appropriate.

In addition to proposing that the value of the travel credit or voucher be equal to or greater than the airfare, the Department is considering whether airlines should be required to offer an option to consumers in which consumers may choose to receive the travel credit or voucher redeemable for the same itinerary as the original ticket, regardless of what the ticket cost is at the time of redemption. The Department believes some consumers may benefit from and prefer this option if they plan to travel on the same itinerary in the future, without worrying about price increases. As airfare fluctuates depending on, among many other factors, travel date, some of the redeemed tickets may be priced less than the original purchase price of the ticket. In those situations, airlines would benefit from offering this option.

Also, the Department proposes to require airlines and ticket agents provide full disclosure of any material restrictions, limitations, or conditions on the use of the credits and vouchers. The Department also proposes to prohibit conditions, limitations, and restrictions imposed on the credits and vouchers that are unreasonable and would materially reduce the value of the credits and vouchers to consumers as compared to the original purchase prices of the airline tickets. For example, under the proposal, a credit or voucher that would severely restrict bookings with respect to travel date, time, or routes would be unreasonable. Similarly, a restriction that a voucher can only be used on one booking and that any residual value would be void afterwards would be considered unreasonable. Further, imposing a rebooking fee or a change fee that reduces the value of the voucher or credit applicable to the new ticket would be considered unreasonable. However, as noted earlier, this NPRM would allow a carrier to retain a service fee for processing the travel voucher or credit, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. To ensure that consumers have access to the full value of the credits or vouchers, the Department also proposes that carriers may not restrict the redemption of the credits or vouchers by providing that the value of the credits or vouchers may only cover the base fare of the new bookings and would not cover any taxes, fees, or surcharges imposed by the government or the carrier. The Department seeks comments on whether regulating the terms and conditions of the credits or voucher in this specific context is reasonable and what other steps the Department should consider to ensure that passengers receiving credits and vouchers for future travel are adequately protected.

In addition to these proposals that intend to ensure consumers receive accurate information regarding their rights to the full value of travel credits or vouchers, the Department is interested in addressing some

[44] The Department's rulemaking on *Refunding Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided* proposes that airlines must refund any ancillary service fees when the service was not provided. See, *supra,* FN 7.

consumers' concern that they may not be able to use the travel credit or voucher due to their age, health condition, or other reasons. The Department is seeking comments on whether it should require that the travel credit or voucher be transferrable at the consumers' discretion. Adding transferability to the travel credit or voucher would ensure that eligible consumers who spent money on tickets they no longer need would not completely lose the value of the tickets. If adopted, should airlines be required to allow multiple transfers? The Department also seeks comments on whether a regulation is necessary to specifically require that carriers and ticket agents ensure that relevant provisions in their contracts with consumers are consistent with the Department's regulation on issuing travel credits and vouchers if adopted, similar to the one proposed in 14 CFR 260.9 regarding refunds.

(9) Airline Cancelling or Significantly Changing Flights After Passenger Cancellation

Under this NPRM, the protections provided to passengers who purchase a non-refundable ticket on a flight to, within, or from the United States and elect to cancel their travel due to government restrictions or health concerns differ from the protections provided to passengers who purchase a non-refundable ticket on a flight to, within, or from the United States that is cancelled or significantly changed by the airline. An airline cancelling flights or significantly changing flight itineraries would entitle passengers to a refund. A passenger cancelling or postponing travel, despite the flights still operating without a significant change, due to government restrictions or reasonable concerns of a serious communicable disease would entitle the passenger to a travel credit or voucher for future travel, except for limited circumstances where passenger would be entitled to a refund because of significant government assistance provided to the airline or ticket agent. The Department is of the tentative view that if an airline cancels or makes a significant change to a flight after a passenger has already requested to cancel his or her a travel itinerary and received a credit or voucher, then the airline or ticket agent should not be required to replace that voucher with a refund. This is because at the time the passenger requested a cancellation of the ticket, the airline was still planning to operate the flight(s) on the itinerary. The Department believes it is overly burdensome and costly for airlines to apply refund eligibility to itineraries that have already been cancelled pursuant to passengers' requests prior to the airline's decision to cancel or significantly change the flight. That said, the Department would caution that its Office of Aviation Consumer Protection has the authority to investigate whether an airline or a ticket agent has engaged in an unfair or deceptive practice when it fails to inform a passenger making a request to cancel the itinerary that the passenger is eligible for a refund, if the airline or ticket agents knows or should have known at the time that a flight has been cancelled or significantly changed.

(10) Airlines and Ticket Agents Receiving Significant Government Financial Assistance Related to a Public Health Emergency

The impact of a public health emergency on the aviation industry can be severe. Indeed, the COVID–19 pandemic has led to international flight restrictions, local ''stay at home'' and ''shelter in place'' orders, and reduced demand for flying, which resulted in a drastic decrease in the number of flights operated and significant financial loss for airlines and ticket agents. To ameliorate these negative consequences, various governments have provided financial support for airlines and other participants in the aviation industry within their jurisdiction. They have done so through various types of measures, including grants and loans, to sustain the industry through these difficult times and protect airline jobs.

Consumers, consumer advocacy groups,[45] and certain members of Congress [46] have urged airlines receiving government financial assistances to provide refunds instead of vouchers or credits to consumers who decided not to travel due to COVID related reasons. They assert that it is fundamentally unfair for airlines to be supported by government funds and refuse to provide refunds to consumers who were not able to travel due to the COVID–19 pandemic. Similarly, in a letter to Congress, the National Association of Attorney Generals urged Congress to consider and enact laws to require carriers that receive Federal financial relief to provide full refunds to customers who voluntarily cancel their flight reservations for reasons related to COVID–19.[47] Although consumer advocacy organizations and others have urged the Department to mandate that airlines that received government funds related to the COVID–19 pandemic refund consumers for flights that consumers were unable to take due to government restrictions or advisories related to COVID, the Department is not proposing to do so. The Department does not have the authority to promulgate retroactive rules unless that power is expressly authorized by Congress.[48] However, pursuant to the Department's authority as described in Section I.B. of this proposed rule, the Department is proposing moving forward to require U.S. and foreign airlines to issue refunds instead of travel credits or vouchers to qualified passengers holding non-refundable tickets for flights that operated without a significant change if the airlines receive a significant amount of government financial assistance related to that public health emergency. The Department seeks comment on how to handle the refund/voucher issuance situation when there is more than one airline on the ticket and not all airlines receive significant government financial assistance. To the extent that a ticket agent sold the ticket to a consumer, as identified by the consumer's financial charge statement, the Department seeks comment on whether the airline receiving government assistance should be required to provide a refund in lieu of the travel credit or voucher.

In determining the scope of ''government financial assistance'' that would impose a requirement to provide refunds to qualified passengers holding non-refundable tickets for flights that operated without a significant change, the Department referenced the definitions for the terms ''Federal award'' and ''Federal financial assistance'' in the Office of Management and Budget's regulation on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. The

[45] See, *e.g., Airlines: Give Us Refunds, Not Vouchers,* petition by Consumer Reports, *https://action.consumerreports.org/20200420_finance_airlinerefundpetition. Consumer Reports, Letter to Sect. Buttigieg, https://advocacy.consumerreports.org/wp-content/uploads/2021/11/CR-letter-to-Sec-Buttigieg-consumer-complaints-11-18-21-FINAL-2.pdf.*

[46] See, *e.g.,* Senator Edward J, Markey and Richard Blumenthal press release, *https://www.markey.senate.gov/news/press-releases/senators-markey-and-blumenthal-blast-airlines-inadequate-response-to-their-request-to-eliminate-expiration-dates-for-all-pandemic-related-flight-credits.*

[47] See, National Association of Attorney Generals (NAAG) press release, *https://www.naag.org/policy-letter/attorneys-general-call-for-new-consumer-protections-to-protect-airline-industry-customers/.*

[48] The Supreme Court, in *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204 (1988), said the Administrative Procedure Act is very clear in defining ''rule'' to mean an agency statement of future effect. The Court stated that agencies do not have the power to promulgate retroactive rules unless that power is expressly authorized by Congress.

regulation in 2 CFR 200.1 defines these terms to include a broad range of financial instruments provided by the Federal government to non-Federal entities. These instruments include direct cash contributions such as grants and direct appropriations, cash contributions or insurance related to loans, loan guarantees, interested subsidies, and non-cash contributions.

Upon consideration, DOT proposes to adopt a definition for ''government financial assistance'' in the context of requiring airlines and ticket agents to provide refunds in lieu of travel credits or vouchers to qualified passengers affected by a public health emergency to include cash contributions provided by a government entity and accepted by a carrier or a ticket agent selling air transportation to U.S. consumers, even if the carrier or the ticket agent is expected to provide shares or options of shares of ownership in exchange for the cash. The Department's proposal would exclude financial assistance in the forms of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity. The proposed definition would cover not only financial assistance provided by the Federal government of the United States to U.S. air carriers and ticket agents based in the United States, but also financial assistance provided by a foreign central government to a foreign airline or a ticket agent selling air transportation to U.S. consumers. The Department's proposal would require airlines and ticket agents to provide refunds in lieu of travel credits or vouchers to qualified passengers affected by a public health emergency only if the future financial assistance is significant. The Department believes that this approach focuses on the net benefits airlines and ticket agents receive from the government's direct cash assistance and ensures that some of the benefits they receive would be passed on to consumers, who also suffer from financial losses due to the same event for which airlines and ticket agents are receiving government assistance. The Department seeks comments on whether significant government financial assistance in the form of tax relief or loan forgiveness is similar enough to direct cash contribution such that the Department's proposal on refunds should include entities receiving these types of financial assistance.

The Department is cognizant that in many cases, government financial assistance is granted with a specific purpose. For example, in the United States, in recognizing the financial difficulties the airline industry faced due to the COVID–19 pandemic, Congress passed several statutes in 2020 and 2021 that granted payments to passenger air carriers, cargo air carriers, and certain contractors, which must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. The Department is not proposing to require airlines or ticket agents to use the specific financial assistances provided by their government as the sources of consumer refunds. Instead, the Department is proposing that the requirement for airlines and ticket agents to provide cash refunds to qualified passengers holding non-refundable tickets for flights that operated without a significant change would not start until an airline or ticket agent receives significant government assistance. This approach recognizes that airlines and ticket agents would have an increased financial ability to issue cash refunds at that time.

The Department's proposal is contingent upon airlines' and ticket agents' receipt of a ''significant'' amount of government financial assistance. The NPRM does not propose a specific threshold to determine whether the government assistance is ''significant'' as the impact of each public health emergency on the airline industry may differ from time to time. Rather, the Department proposes to consider relevant factors, on a case-by-case basis, to determine what amount of government financial assistance provided to an airline would be considered ''significant'' and therefore trigger the refund requirement in the proposed 14 CFR 260.7. The factors that the Department believes are relevant include: the size of the entity (annual enplanements for airlines, annual revenue, the number of employees), year-over-year comparison of traffic and revenue before and after the public health emergency is declared, and the amount of government financial assistance accepted in relation to the entity's annual revenue. For foreign carriers, the Department may also consider their enplanements to and from the United States in addition to the total enplanements. The Department notes that taking these factors into consideration, government financial assistance accepted by numerous U.S. and foreign carriers during the COVID–19 pandemic, including financial assistance provided under the CARES Act, could be considered ''significant.'' The Department seeks comments on whether these considerations are reasonable to determine what amount of government assistance would be significant enough to trigger the refund requirement. In addition, the Department seeks comment on what other considerations are relevant that are not mentioned here. Should the Department adopt the same amount of government financial assistance as the benchmark for each public health emergency, which would apply to all entities, or should the amounts differ based on the entity's sizes and other considerations? Should there be a different threshold or a different set of considerations for ticket agents?

Regarding the procedure of determining the amount of government financial assistance that would be considered ''significant'' for the purpose of airline refunds, the Department seeks comment on a process in which, upon the occurrence of a public health emergency and the provision of government financial assistance to the industry, the Department would apply the relevant factors and seek public comments on what it tentatively views as being ''significant'' financial assistance that would trigger the refund requirement. This notice and comment process would ensure the public's views are fully considered before there is a determination as to what is significant using the factors set forth in this rulemaking. It would also ensure that consumers know when they would be entitled to a refund instead of a non-expiring voucher or credit.

The Department emphasizes that to be eligible for a refund under this proposal, a passenger must be otherwise eligible for a non-expiring travel credit or voucher under the proposed provisions in 14 CFR 259.5(b)(6) or 14 CFR 399.80(o)(1)(A), and must have made a refund request from the carrier or ticket agent within 12 months of the date that a determination has been made that the carrier or ticket agent received significant government financial assistance in relation to the public health emergency at issue. Under this proposal, passengers who have already accepted non-expiring travel credits or vouchers but have not redeemed them would be able to seek a refund after the airline or the ticket agent receives the government financial assistance. The Department believes that limiting the refund obligation to 12 months would add certainty to airlines with respect to financial and operational planning, and would also give eligible consumers ample time to seek refunds. The Department seeks comment on the proposed refund eligibility timeframe.

Because this refund requirement for passenger-initiated cancellations is triggered by significant government financial assistance provided to carriers

and ticket agents in relation to a public health emergency, when there is no public health emergency declared, passengers who have or are likely to have contracted a serious communicable disease that poses a direct threat to the health of others or those who are restricted from traveling by a government order in relation to a serious communicable disease and want to cancel their non-refundable tickets would not be eligible for a refund but would be entitled to a non-expiring travel credit or voucher under this proposal.

As with the proposal to require issuance of travel credits and vouchers to passengers holding non-refundable tickets, airlines and ticket agents under the proposed obligation to issue a refund because of their acceptance of significant government financial assistance would be allowed to require proof from passengers to demonstrate that they are unable or advised not to travel consistent with a government restriction, advisory, or guidance related to a public health emergency, and if appropriate, provide medical documentation. Carriers and ticket agents that have previously received required documentation from passengers for issuing travel credits or vouchers may not require documentation again when the passenger wants to exchange the unused credit or voucher for a refund. Carriers and ticket agents under the proposed obligation to issue a refund in these situations would be permitted to offer travel credits of the same or higher dollar value or other compensations, as long as passengers are informed of their eligibility for a refund.

The Department notes again that the proposal to require airlines and ticket agents to issue refunds in lieu of travel credits or vouchers because airlines and ticket agents receive significant government financial assistance related to a public health emergency, if adopted in a final rule, would not apply retroactively. In other words, if the Department adopts this proposal, airlines and ticket agents that have already accepted government financial assistance during the COVID–19 pandemic, would not be required to provide refunds to eligible consumers on the basis of that assistance even if the financial assistance would otherwise be deemed ''significant.''

v. Effective Date

We propose that any final rule we adopt take effect 90 days after the publication in the **Federal Register**. We believe this would allow sufficient time for carriers and ticket agents to comply with the various proposed requirements should they be finalized. We invite comments on whether 90 days is the appropriate interval for implementation of the proposed requirements if adopted in final.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (''Regulatory Planning and Review''), supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''), directs Federal agencies to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justifies its costs. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis for the proposed rule, summarized in this section and available in the docket. Due to a lack of usable data to specify a baseline and evaluate impacts, the analysis is mostly qualitative.

The proposed rule would clarify the requirement that carriers and ticket agents give prompt refunds when a carrier cancels flights or makes significant itinerary changes, including changes that affect the schedule or quality of service. It would create industry-wide definitions for ''cancelled flight'' and ''significant change of flight itinerary'' and define ''prompt'' as within 7 days of a refund request for credit card purchases and 20 days for purchases by other forms of payment.

The proposed rule would also require airlines and ticket agents to give non-expiring travel credits or vouchers to passengers who do not travel to protect themselves or others from serious communicable diseases during a public health emergency and passengers who do not travel due to government restrictions related to a serious communicable disease. Airlines and ticket agents could require documentation showing that the decision was consistent with travel restrictions and guidance issued by health authorities or medical professionals. For passenger cancellation requests made during a public health emergency, airlines and ticket agents would be required to issue cash or cash equivalent refunds rather than credits or vouchers if they received significant government financial assistance during the public health emergency, although the rule does not define ''significant financial assistance.'' The issue of significance would be considered in a subsequent and separate administrative process.

Table I summarizes the expected economic impacts of the proposed rule. The expected net benefits of the proposed rule depend on the probability that a future state of the world involves a public health emergency. In the case of no public emergency, the proposed rule will have only modest impacts, but could result in a decrease in transaction costs associated with processing and obtaining compensation for cancellations and significant itinerary changes. Net benefits would be positive by roughly the amount of this reduction in transaction costs. With a public health emergency, however, net benefits are likely to be negative. While benefits are uncertain, we do not expect that the proposed rule would measurably decrease the spread of serious communicable disease for several reasons. These reasons include that the incremental incentive from a non-expiring travel credit relative to baseline industry practices is limited and unlikely to outweigh restrictions imposed by public health authorities or individuals' own risk preferences in the decision to postpone travel. In addition, during a public health emergency, the proposed rule is likely to increase transaction and documentation costs. The increase in transaction costs is mainly due to uncertainty in the definition of significant government assistance and the requirement creating additional administrative burdens for receiving government funds. The proposed rule could also lead to other societal costs depending on whether it affects industry acceptance of government assistance, but these impacts are uncertain.

In terms of distributional effects, we do not expect significant changes in the absence of a public health emergency. The needed changes to existing airline policies are small, and passengers would only rarely need to use the protections related to serious communicable diseases. With a public health emergency, the number of refunds to passengers is expected to increase, and fewer passengers are likely to forfeit travel credits for trips they cancel due to public health concerns. Thus, while transfers to passengers would largely remain unchanged without a public health emergency, they would increase during a health emergency.

TABLE I—SUMMARY OF ANNUAL ECONOMIC IMPACTS

[2021 Dollars]

	Baseline 1: no public health emergency	Baseline 2: during a public health emergency
Benefits:		
Reduction in cases of serious contagious disease	*De minimis*	Uncertain.
Costs:		
Documentation	*De minimis*	$55.5 million (based on example discussed in regulatory impact analysis).
Transaction costs	Decrease	Increase.
Foregone social benefits of government programs	n/a	Uncertain.
Transfers:		
Refunds (transfer from taxpayers to passengers)	*De minimis*	Increase.
Redeemed travel credits (transfer from airlines to passengers)	*De minimis*	Increase.

Certain regulatory alternatives would reduce transaction costs due to the proposed rule. For example, removing the refund requirement when an airline or ticket agent receives significant government financial assistance would eliminate potential transaction costs due to ambiguities and would not risk other social costs. Another alternative that could reduce costs would be not allowing airlines to request documentation from passengers to demonstrate that they are canceling travel due to a government order restricting travel or to protect themselves and others from serious contagious diseases. Airlines would not be able to distinguish these cancellations from other passenger-initiated cancellations, however, and passengers would have an incentive to overuse these protections.

A third regulatory alternative, which would reduce transaction costs and eliminate documentation costs, would be limiting the scope of the proposed rule to adding the new definitions for carrier-initiated ''cancelled flight'' and ''significant change of flight itinerary.'' This alternative would not grant additional protections to passengers who purchase non-refundable tickets but are unable or choose not to travel due to conditions related to a public health emergency or contracting a serious communicable disease.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would have some impact on air carriers and ticket agents that qualify as small entities. To assess the impact of this proposed rule, the Department has prepared an initial regulatory flexibility analysis (IRFA), summarized in this section and available at regulations.gov under Docket No. DOT–OST–2022–0089.

A description of the reasons why DOT is considering this action, as well as the objectives of the proposed rule, is provided in Sections I–IV of the preamble of this NPRM. The legal basis for the proposed rule is also set forth in Section I of the preamble.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

An air carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less, as described in 14 CFR 399.73. In 2020, 28 air carriers meeting these criteria reported passenger traffic data to the Bureau of Transportation Statistics. A ticket agent is a small entity if it has total annual revenues below $22 million (see *https://www.sba.gov/document/support--table-size-standards,* NAICS Codes 561510). This amount excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, but includes commissions received. Based on data from the 2017 Economic Census, which groups firms by NAICS code and revenue size, 7,827 ticket agents had revenues less than the $25 million threshold in the census. Because this number is higher than the $22 million NAICS threshold, this number may overestimate the number of ticket agents who meet the SBA definition of a small business.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule could have potentially significant impacts on some number of small entities, depending upon whether a public health emergency has been declared. Most potential impacts are due to the proposed requirement that airlines and ticket agent give eligible consumers refunds rather than non-expiring travel vouchers or credits when they receive significant government financial assistance during a public health emergency. Other costs are due to the need to process documentation when passengers cancel travel because they are restricted or prohibited from travel by a government order or to protect themselves and others from serious contagious diseases consistent with travel restrictions and guidance issued by health authorities.

In the baseline case where no public health emergency occurs, the impact of this proposed rule is expected to be minimal because it is normal business practice for airlines and ticket agents to provide refunds under the conditions required by this rule. In the baseline case where a public health emergency occurs, the proposed rule has the potential to have significant impacts on small entities.

The number of passengers who would not travel for public health reasons is difficult to predict, but a hypothetical example illustrates the potential economic costs associated with the documentation requirements of the rule for small air carriers. In 2020, small air carriers in the United States made 1.14 million passenger trips.[49] If passengers needed to restrict travel for 5% of the trips and provide airlines with documentation, passengers would submit approximately 57,000 forms. We assume that a customer service representative working for an airline or ticket agent would need an average of 5 minutes (0.083 hours) to review

[49] Bureau of Transportation Statistics. 2021. ''Full Year 2020 and December 2020 US Airline Traffic Data.'' *https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data.*

documentation and request additional documentation if needed, for a total of approximately 4,750 hours. Using median wage data from the Bureau of Labor Statistics as of May 2020 for customer service representatives, we use an estimate of $26.84 ($18.51 median hourly wage times a multiplier of 1.45 to account for benefit costs).[50] The total estimated annual cost of the forms would be approximately $127,500, or about $4,500 per carrier on average. Some of these costs, or additional costs, could be borne by small ticket agents.

In addition, if airline or ticket agents receive significant government financial assistance during a public health emergency, then they would need to issue cash refunds rather than non-expiring travel vouchers or credits. Tying the cash refund requirement to the receipt of government assistance adds costs to accepting that assistance.

Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The Department did not identify any Federal rules that may duplicate, overlap, or conflict with this proposed rule, which sets forth the circumstances under which airlines must provide travel credits, vouchers, or refunds related to a serious communicable disease or carrier-initiated flight cancellations or significant changes.

Description of Significant Alternatives Considered

The Department analyzed two alternatives that would potentially reduce impacts on small businesses. One alternative is removing the cash refund requirement as a condition of accepting significant government assistance. The Department has tentatively concluded, however, that as a policy matter, airlines receiving significant government assistances should go beyond issuing travel credits and vouchers to consumers whose ability or willingness to travel is significantly impacted by a public health emergency.

A second alternative is to limit the scope of the rule to specifying definitions for ''significant change in itinerary'' and ''cancellation.'' The Department has tentatively concluded, however, that removing this portion of the rule would undermine the Department's goal to protect consumers' financial interests when the disruptions to their travel plans were caused by public health concerns beyond their control. The Department also believes that protecting consumers' financial interests would further incentivize persons not to travel if they have or may have a serious communicable disease.

D. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

E. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because none of the options on which the Department is seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

This NPRM proposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*). The proposed rulemaking would allow airlines and ticket agents to require passengers wishing to cancel a flight itinerary that is still operated to provide documentation demonstrating that that they are restricted or prohibited from travel by a government order related to a serious communicable disease, or that they are unable or choose not to travel to protect themselves or other from a serious communicable disease, consistent with restrictions, advisories, or guidance by relevant health authorities or health professionals. For this information collection, a description of the respondents and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Requirement To Prepare and Submit to Airlines Documentations Demonstrating a Passenger is Unable or Advised Not To Travel Due to Government Restrictions or Concerns Related to a Serious Communicable Disease

Respondents: Passengers restricted from travel due to a government order related to a serious communicable disease, passengers advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because they have or may have contracted a serious communicable disease such that their travel would pose a threat to the health of others, and passengers advised by a medical professional or determine consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel to protect themselves from a serious communicable disease during a public health emergency.

Number of Respondents: The number of respondents would vary greatly depending on whether there is a public health emergency and the magnitude of that public health emergency. When there is a public health emergency with a similar magnitude of the COVID–19 pandemic, the number of respondents could potentially be very high. The Department's data shows that in 2020, U.S. airlines enplaned 558 million fewer passengers in domestic air transportation than in 2019.[51] If 1% of this reduction was due to passengers are unable or are advised to not travel for a qualifying reason and were required by airlines and ticket agents to submit documentation, there would be 5.58 million respondents.

Estimated Annual Burden on Respondents: We estimate that each respondent would need 30 minutes (0.5 hours) to obtain a documentation from a medical professional per response, per year. We also estimate that a customer service representative working for an airline or a ticket agent would need an average of 5 minutes (0.083 hours) to review the documentation and request additional documentation if needed. Passengers would spend a total of approximately 2.8 million hours per year (0.5 hours × 5.58 million passengers) to obtain the documentation. Airline and ticket agent customer service representatives would spend approximately 460,000 hours

[50] Bureau of Labor Statistics. 2022. ''Occupational Employment and Wages, May 2020: 43–4051 Customer Service Representatives.'' *https://www.bls.gov/oes/current/oes434051.htm.*

[51] Bureau of Transportation Statistics. 2021. ''Full Year 2020 and December 2020 US Airline Traffic Data.'' *https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data.*

(0.083 hours x 5.58 million forms) per year to review the documentation.

To calculate the hourly value of time spent on the documentation, we used median wage data from the Bureau of Labor Statistics as of May 2020. Respondents would obtain, present, and submit the documentation on their own time without pay and we estimate the value of this uncompensated activity using a post-tax wage estimate of $15.42 per hour ($20.17 median hourly wage for all occupations minus a 17% estimated tax rate). For customer service representatives, we use an estimate of $26.84 per hour ($18.51 median hourly wage times a wage multiplier of 1.45). In this scenario, the total annual estimated documentation costs of the forms would be approximately $55.5 million (Table II).

TABLE II—EXAMPLE ANNUAL COST ESTIMATE FOR DOCUMENTATION

Group	Forms	Hours per form	Total hours	Hourly time value	Estimated costs (millions)
People restricting travel	5,580,000	0.5	2,790,000	$15.42	$43.0
Customer service representatives	5,580,000	0.083	463,410	26.84	12.4
Total			3,253,410		55.5

The Department invites interested persons to submit comments on any aspect of this information collection, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted on these issues will be summarized or otherwise included in the request for OMB approval of these information collections.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private section, of $100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' This proposal relates consumer protection. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Signed August 2, 2022, in Washington, DC.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

List of Subjects

14 CFR Part 259

Air Carriers, Consumer Protection, Reporting and Recordkeeping Requirements.

14 CFR Part 260

Air Carriers, Consumer Protection.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set forth in the preamble, the Department proposes to amend title 14 CFR Chapter II as follows:

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS [AMENDED]

■ 1. The authority citation for 14 CFR Part 259 is revised to read as follows:

Authority: 49 U.S.C. 40101(a), 40113(a), 41702, 41708, 41712, and 42301.

■ 2. Amend § 259.5 by revising paragraphs (a) and (b)(5), redesignating paragraphs (b)(6) through (12) as paragraphs (b)(7) through (13), and adding new paragraph (b)(6) to read as follows:

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan by Covered Carrier and Requirements for Other Carriers.*

(1) Each covered carrier shall adopt a Customer Service Plan applicable to its scheduled flights, as specified in paragraphs (b)(1) through (13) of this section and adhere to the plan's terms.

(2) Each certificated or commuter air carrier or foreign air carrier that operates scheduled passenger flights to, within, or from the United States solely using aircraft originally designed to have a passenger capacity of fewer than 30 seats shall comply with paragraphs (b)(5) and (6) of this section.

(b) * * *

* * * * *

(5) Where ticket refunds or ancillary service fee refunds are due pursuant to 14 CFR part 260, providing prompt refunds, within 7 days of a refund request as required by 14 CFR 374.3 for credit card purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases. Carriers may choose to provide the refunds in the original form of payment (*i.e.,* money is returned to an individual using whatever payment method the individual used to make the original payment, such as a check, a credit card, a debit card, cash, or airline miles), or in another form of payment that is cash equivalent as defined in 14 CFR 260.2. Carriers may offer travel credits, vouchers, or other compensation in lieu of refunds, but carriers first must inform consumers that they are entitled to a refund. Carriers must clearly disclose any material restrictions, conditions, or limitations on these compensations they offer, so consumers can make informed choices about the refund or other

compensation that would best suit their needs.

* * * * *

(6) Providing non-expiring travel credits or vouchers, upon request, to a consumer holding a non-refundable ticket as set forth in paragraphs (b)(6)(i)(A) through (i)(C) of this section and subject to paragraphs (6)(b)(ii) through (v) of this section.

(i) In circumstances when:

(A) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, the consumer is unable to travel because of a U.S. (Federal, State or local) or foreign government restriction or prohibition (*e.g.,* stay at home order, entry restriction, or border closure) in relation to a serious communicable disease that is issued after the ticket purchase.

(B) There is a public health emergency as defined in 42 CFR 70.1, the consumer purchased the airline ticket before the public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a medical professional or determines consistent with public health guidance issued by the U.S. Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel by air to protect himself or herself from a serious communicable disease as defined in 14 CFR 260.2.

(C) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, the consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease as defined in 14 CFR 260.2, and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others.

(ii) As a condition for issuing the non-expiring travel credits or vouchers in paragraph (b)(6)(i) of this section, carriers may require, as appropriate, the following documentation dated within 30 days of the initial departure date of the affected flight(s):

(A) For any consumer claiming an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, carriers may require the consumer to provide the applicable government order or other document demonstrating how the requirement restricts the consumer's ability to travel;

(B) For any consumer stating that he or she is not traveling during a public health emergency because the consumer has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air to protect himself or herself from a serious communicable disease as described in paragraph (b)(6)(i)(B) of this section, carriers may require the consumer to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the consumer's health condition, that the consumer should not travel by commercial air transportation to protect his or her health; and

(C) Regardless of whether there is a public health emergency, for any consumer stating that he or she has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because he has or may have contracted a serious communicable disease that poses a direct threat to the health of others as described in paragraph (b)(6)(i)(C) of this section, carriers may require the consumer to provide the applicable guidance issued by CDC, comparable agencies in other countries, or the WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the consumer's health condition, that the consumer should not travel by commercial air transportation to protect the health of others.

(iii) A carrier may retain a service fee for processing the travel voucher or credit, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

(iv) A carrier must promptly issue the non-expiring travel credits or vouchers with a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges and prepaid ancillary service fees not utilized by the consumer).

(v) A carrier may not impose unreasonable restrictions, conditions, or limitations on the travel credits or vouchers, including conditions that severely restricts booking with respect to travel date, time, or route; a limitation that only allows redemption in one booking and renders any residual value void; or a limitation that only allows the value of the credits or vouchers to apply to the base fare of a new booking. A carrier must clearly disclose any material restrictions, limitations, or conditions on the use of the credits and vouchers, including but not limited to administrative fees for redemption, advance purchase or capacity restrictions, and blackout dates.

* * * * *

■ 3. Add Part 260 to read as follows:

PART 260—REFUNDS FOR AIRLINE FARE AND ANCILLARY FEES

Sec.

Authority: 49 U.S.C. 40101(a), 41702, and 41712.

§ 260.1 Purpose.

The purpose of this part is to ensure that carriers refund consumers for: (1) ancillary services related to air travel that consumers paid for but were not provided; (2) fees to transport checked bags that are lost or significantly delayed; (3) a consumer's fare for a cancelled flight or a significant change of flight itinerary where the consumer does not accept the alternative transportation, airline voucher or credit, or other compensations offered by the carrier; and (4) a consumer's fare in lieu of the travel credit or voucher specified in section 259.5(b)(6)(i)(A) through (C) of this title, if the carrier received significant financial assistance from a government entity as a result of a public health emergency.

§ 260.2 Definitions.

As used in this part:

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Ancillary service means any service related to air travel provided by a covered carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to,

checked or carry-on baggage, advance seat selection, access to in-flight entertainment program, in-flight beverages, snacks and meals, pillows and blankets, and seat upgrades.

Cancelled flight means a covered flight that was published in the carrier's Computer Reservation System at the time of the ticket sale but was not operated by the carrier.

Cash equivalent means a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger's bank account, funds provided through digital payment methods (*e.g.,* PayPal, Venmo), or a gift card that is widely accepted in commerce. Carriers are prohibited from requiring consumers to bear the burden for maintenance or usage fees related to cash equivalent payment.

Checked bag means a bag or an item other than a bag that was provided to a carrier by or on behalf of a passenger, for transportation in the cargo compartment of a scheduled passenger flight. A checked bag includes a gate-checked bag and a valet bag.

Covered carrier means an air carrier or a foreign air carrier operating to, from or within the United States, conducting scheduled passenger service.

Covered flight means a scheduled flight operated or marketed by a covered carrier to, from, or within the United States.

Government financial assistance means a cash contribution a covered carrier receives directly or indirectly from a government entity including instances where the carrier is expected to provide shares or options of share of ownership in exchange for the cash. It does not include financial assistance in the form of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity.

Foreign air carrier means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

Serious communicable disease means a communicable disease as defined in 42 CFR 70.1 that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment. For example, the common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequence. AIDS has serious health consequences but is not readily transmissible in an aircraft cabin environment. Both the common cold and AIDS would not be considered serious communicable diseases. SARS is readily transmissible in an aircraft cabin environment and has severe health consequences. SARS would be considered a serious communicable disease.

Significant change of flight itinerary means a change to a covered flight itinerary made by a covered carrier where: (1) the consumer is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time; (2) the consumer is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time; (3) the consumer is scheduled to depart from a different origination airport or arrive at a different destination airport; (4) the consumer is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (5) the consumer is downgraded to a lower class of service; or (6) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.

Significantly delayed checked bag means a checked bag that is not delivered to the consumer or the consumer's agent within 12 hours of the last flight segment's arrival for domestic itineraries and within 25 hours of the last flight segment's arrival for international itineraries, including itineraries that include both international flight segment(s) and domestic flight segment(s).

Significant government financial assistance means government financial assistance that the Department has determined through a public process to be significant.

§ 260.3 Applicability.

This part applies to all covered carriers that collect fares or fees, including checked baggage fees, for ancillary services to be provided on or in relation to a covered flight.

§ 260.4 Refunding fees for ancillary services that consumers paid for but that were not provided.

A covered carrier shall promptly provide a refund to a consumer for any fees it collected from the consumer for ancillary services related to air travel if the service was not provided, including fees for services on the consumer's scheduled flight, on a subsequent replacement flight if there has been a rescheduling by the carrier, or on a flight not taken by the consumer due to oversales or a flight that is not operated by the carrier. If a ticket agent collected the ancillary fee, the carrier that is scheduled to operate the flight, or for multiple-carrier itineraries, the carrier scheduled to operate the last segment of the consumer's itinerary is responsible for providing a refund.

§ 260.5 Refunding fees for significantly delayed or lost bags.

Upon receiving a notification pursuant to paragraph (b) of this section from a consumer, a covered carrier that collected a checked baggage fee from the consumer or, if a ticket agent collected the checked baggage fee from the passenger, the covered carrier that is scheduled to operate the flight or the covered carrier that is scheduled to operate the last segment of the consumer's itinerary if multiple-carrier itineraries, shall promptly provide a refund to the consumer of any fee charged for transporting a significantly delayed checked bag.

(a) Determining the length of delay. (1) For the purpose of determining whether a refund of the baggage fee is due, the 12-hour deadline for domestic itineraries and the 25-hour deadline for international itineraries is calculated from the time when a passenger was given the opportunity to deplane from the aircraft at the passenger's final destination; or, if the final travel segment was on alternate ground transportation, a comparable time when the passenger disembarks from the ground transportation.

(2) For the purpose of determining whether a refund of the baggage fee is due, a delayed bag is considered to have been delivered to a passenger or a passenger's agent if:

(i) The bag has been transported to a location, other than the destination airport, based on agreement by the passenger and the carrier, whether or not the passenger is present to take possession of the bag;

(ii) The bag has arrived at its intended final destination airport and is available for pick up, and the carrier has provided notice to the passenger or the passenger's agent (*e.g.,* via push notice through a mobile application, email, or text message) that the bag has arrived at that airport and is ready for pick up; or

(iii) The bag has arrived at the intended final destination airport and the carrier has provided notice to the passenger or the passenger's agent (*e.g.* via push notice through a mobile application, email, or text message) that the bag has arrived at that airport and will be delivered to a location that the passenger and carrier have agreed on.

(b) Notification of carrier by passenger about lost or significantly delayed bag.

A covered carrier's obligation to provide a prompt refund for a lost bag or a significantly delayed bag does not begin until passengers provide notification of the lost or significantly delayed bag. If the entity that collected the baggage fee is the same entity that received a mishandled baggage report from the passenger, the filing of the mishandled baggage report constitutes a notification from the passenger for the purpose of receiving a refund, if due, for the baggage fee. In all other situations, passengers must inform the carrier that collected the baggage fee of the lost or delayed bag; or, if a ticket agent collected the bag fee, passengers must inform the carrier that operated the last flight segment about the lost or delayed bag for the purpose of receiving a refund for the baggage fee for a significantly delayed bag.

§ 260.6 Refunding fare for flights cancelled or significantly changed by carriers.

A covered carrier shall promptly provide a refund, as described in section 259.5 of this title, for the fare it collected from a passenger for any cancelled flight or for any flight with a significant change of flight itinerary where the passenger chooses not to accept the alternative transportation, voucher or credit, or other compensation offered by the carrier.

§ 260.7 Refunding fare for flights that consumer choose not to take due to public health concerns or restrictions.

(a) When there is a declaration of a public health emergency as defined in 42 CFR 70.1 and DOT has published a determination pursuant to section 260.10 that the covered carrier received significant government financial assistance as a result of the public health emergency, the covered carrier shall promptly provide a requested refund for the fare it collected from a passenger meeting the criteria of section 259.5(b)(6)(i)(A) through (b)(6)(i)(C) of this title, in the manner consistent with 14 CFR 259.5 and subject to paragraphs (b) through (d) of this section, in lieu of the non-expiring travel credits or vouchers specified in section 259.5(b)(6) of this title.

(b) To receive the refunds, passengers shall make a request for a refund from the covered carrier within 12 months of the date that DOT published a determination pursuant to section 260.10 that the carrier received significant financial assistance. Passengers are also entitled to a refund if they have already received travel credits or vouchers under 14 CFR 259.5(b)(6)(i)(A) or 259.5(b)(6)(i)(B) prior to the date that DOT published a determination pursuant to section 260.10 that the carrier received significant government financial assistance and the passengers have not redeemed those credits or vouchers. Passengers must also have notified the carrier of their preference of a refund in lieu of the credit or voucher within 12 months of the date that DOT published the determination that the carrier received significant financial assistance in relation to the public health emergency applicable to the customer's refund request.

(c) As a condition for issuing the refunds under this section, carriers may require, as appropriate, any passenger requesting a refund provide documentations specified in 14 CFR 259.5(b)(6)(ii), if such documentation has not already been provided to carriers when the passenger requested non-expiring travel credits or vouchers.

(d) A carrier may retain a service fee for issuing the refund, as long as the fee is on a per-passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

§ 260.8 Providing prompt refunds.

When a refund of a fare or a fee for an ancillary service, including a fee for lost or significantly delayed checked baggage, is due pursuant to this part, the refund must be issued promptly consistent with the requirement of 14 CFR 259.5(b)(5).

§ 260.9 Contract of carriage provisions related to refunds.

A carrier's failure to ensure that its contract of carriage provisions are consistent with carriers' obligations as specified by this part will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 subject to enforcement action by the Department.

§ 260.10 DOT Determination of Significant Government Financial Assistance.

The Department will determine whether government financial assistance provided after [Effective date of the final rule] as a result of a public health emergency is significant through the public process described in this section.

(a) The Department will consider relevant factors in determining whether government financial assistance is significant, including:

(i) The size of the entity (annual enplanement for airlines, annual revenue, the number of employees);

(ii) Year-over-year comparison of traffic and revenue before and after the public health emergency is declared;

(iii) The amount of government financial assistance accepted in relation to the entity's annual revenue; and

(iv) For foreign carriers, enplanements to and from the United States in addition to total enplanements.

(b) The Department will publish for comment in the **Federal Register** a proposed determination of whether the government financial assistance is significant, taking into consideration the factors in paragraph (a) of this section.

(c) The Department will publish a final determination in the **Federal Register** of whether the government financial assistance is significant, taking into consideration the factors in paragraph (a) of this section and public comments received on the proposed determination described in paragraph (b) of this section.

PART 399—STATEMENTS OF GENERAL POLICY [AMENDED]

■ 4. The authority citation for Part 399 continues to read as follows:

Authority: 49 U.S.C. 41712, 40113(a). 5. Amend § 399.80 by revising the introductory text paragraph, paragraph (l) and adding paragraph (o) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (o) of this section by a ticket agent of any size and the practice enumerated in paragraph (s) of this section by a ticket agent that sells air transportation online and is not considered a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

* * * * *

(l) Failing or refusing to make a prompt refund to a passenger for the fare that a ticket agent sold to the passenger for any cancelled flight or for any flight with a significant change of flight itinerary and the passenger chooses not to accept the alternative transportation, voucher or credit, or other compensations offered by the carrier or the ticket agent. A prompt refund is one that is made within 7 days of receiving a refund request as required by 12 CFR part 1026 for credit card purchases, and within 20 days after receiving a refund request for cash or check or other forms of purchases. Ticket agents may choose to provide the refunds in the original form of payment (*i.e.,* money is returned to individual using whatever payment method the individual used to make the original payment, such as a check, a credit card,

a debit card, cash, or airline miles), or in another form of payment that is cash equivalent. A ticket agent may retain a service fee for purchasing the ticket or processing the refund, as long as the fee is on a per passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. Ticket agents may offer travel credits, vouchers, or other compensation in lieu of refunds, but they first must inform consumers that consumers are entitled to a refund if that is the case. Ticket agents must clearly disclose any material restrictions, conditions, and limitations on these compensations they offer, so consumers can make informed choices about the refund or other compensation that would best suit their needs.

For purposes of this paragraph, the following definitions apply:

(1) *Cancelled flight means* a flight that was published in a carrier's Computer Reservation System at the time of the ticket sale but was not operated by the carrier.

(2) Cash equivalent means a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger's bank account, funds provided through digital payment methods (*e.g.,* PayPal, Venmo), or a gift card that is widely accepted in commerce. Ticket agents are prohibited from requiring consumers to bear the burden for maintenance or usage fees related to cash equivalent payment.

(3) *Covered flight means a scheduled flight to, from, or within the United States.*

(4) *A significant change of flight itinerary means a change to a flight itinerary consisting covered flight(s) made by a U.S. or foreign carrier where:* (i) the passenger is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time; (ii) the passenger is scheduled to arrive at the destination airport three hours or more for domestic itineraries or six hours or more for international itineraries later than the original scheduled arrival time; (iii) the passenger is scheduled to depart from a different origination airport or arrive at a different destination airport; (iv) the passenger is scheduled to travel on an itinerary with more connection points than that of the original itinerary; (v) the passenger is downgraded to a lower class of service; or (vi) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.

* * * * *

(o) Failing to provide non-expiring travel credits or vouchers, upon request, to a passenger holding a non-refundable ticket in scheduled air transportation to, from, or within the United States sold by the ticket agents as set forth in paragraphs (o)(1)(A) through (o)(1)(C) of this section and subject to paragraphs (o)(2) through (5) of this section, or failing to provide refunds, in lieu of providing travel credits or vouchers specified in paragraphs (o)(1)(A) through (o)(1)(C) of this section, to a passenger holding a non-refundable ticket in scheduled air transportation to, from, or within the United States sold by the ticket agents as set forth in paragraph (o)(1)(D) of this section and subject to paragraphs (o)(2) through(4) of this section.

(1) In circumstances where:

(A) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, if the passenger is unable to travel because of a U.S. (Federal, State or local) or foreign government restriction or prohibition (*e.g.,* stay at home order, an entry restriction, border closure) in relation to a serious communicable disease that is issued after the ticket purchase.

(B) There is a public health emergency as defined in 42 CFR 70.1, if the consumer purchased the airline ticket before the public health emergency was declared, the consumer is scheduled to travel during the public health emergency, and the consumer is advised by a medical professional or determines consistent with public health guidance issued by the U.S. Centers for Disease Control and Prevention (CDC), comparable agencies in other countries, or the World Health Organization (WHO) not to travel by air to protect the consumer from a serious communicable disease as defined in 14 CFR 260.2); and

(C) Regardless of whether there is a public health emergency as defined in 42 CFR 70.1, if the consumer is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease as defined in 14 CFR 260.2 and the consumer's condition is such that traveling in commercial flights would pose a direct threat to the health of others.

(D) There is a public health emergency as defined in 42 CFR 70.1 and the Department has made a determination pursuant to 49 CFR 260.10 that the ticket agent has received significant government financial assistance after [Effective date of the final rule] as a result of the public health emergency, if the consumer is eligible for travel credits or vouchers pursuant to paragraphs (o)(1)(A) through (o)(1)(C) of this section. Such passengers must have made a request for a refund from the ticket agent pursuant to this paragraph within 12 months of the date that the Department has made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant financial assistance. Ticket agents must also provide a refund to passengers who have already received travel credits or vouchers under this section prior to the date that DOE made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant government financial assistance if the passengers have not redeemed those credits or vouchers, and have notified the ticket agent of their preference of a refund in lieu of the voucher within 12 months of the date that the Department made a determination pursuant to 49 CFR 260.10 that the ticket agent received significant financial assistance in relation to the public health emergency applicable to the customer's refund request.

For purpose of this paragraph, *government financial assistance* means a cash contribution a ticket agent receives directly or indirectly from a government entity, including instances where the ticket agent is expected to provide shares or options of shares of ownership in exchange for the cash. It does not include financial assistance in the form of government issued, subsidized, or guaranteed loans and non-cash contributions by a government entity; and

For purposes of this paragraph, *significant government financial assistance* means government financial assistance that the Department has determined through a public process to be significant.

(2) As a condition for issuing the non-expiring travel credits or vouchers in paragraphs (o)(1)(A) through (o)(1)(C) of this section or refunds in paragraph (o)(1)(D) of this section, ticket agents may require, as appropriate, the following documentation dated within 30 days of the initial departure date of the affected flight(s):

(A) For any passenger claiming an inability to travel due to a government restriction or prohibition in relation to a serious communicable disease, ticket agents may require the passenger to provide the applicable government

order or other document demonstrating how the requirement restricts the passenger's ability to travel.

(B) For any passenger stating that the passenger is not traveling during a public health emergency because the passenger has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air to protect himself or herself from a serious communicable disease as described in paragraph (o)(1)(B) of this section, ticket agents may require the passenger to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation to protect the passenger's health; and

(C) Regardless of public health emergency, for any passenger stating that the passenger has been advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable agencies in other countries, or WHO not to travel by air because the passenger has or may have contracted a serious communicable disease that poses a direct threat to the health of others as described in paragraph (o)(1)(C) of this section, ticket agents may require the passenger to provide the applicable guidance issued by CDC, comparable agencies in other countries, or WHO, and/or a written statement from a licensed medical professional, attesting that it is the medical professional's opinion, based on current medical knowledge and the passenger's health condition, that the passenger should not travel by commercial air transportation to protect the health of others.

(3) A ticket agent must promptly issue non-expiring travel credits or vouchers with a value equal to or greater than the fare (including government-imposed taxes and fees and carrier-imposed fees and surcharges) and prepaid ancillary service fees for which the service is not provided to the consumer.

(4) When issuing travel credits or vouchers pursuant to paragraphs (o)(1)(A) through (o)(1)(C) or issuing refunds pursuant to paragraph (o)(1)(D) of this section, a ticket agent may retain any service fee for issuing the ticket or charge a service fee for processing a voucher or credit or a refund, as long as the fee is on a per passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare.

(5) A ticket agent may not impose unreasonable restrictions, conditions, or limitations on the travel credits or vouchers issued pursuant to paragraphs (o)(1)(A) through (o)(1)(C) of this section that impact its value, including conditions that severely restricts booking with respect to travel date, time, or route; a limitation that only allows redemption in one booking and renders any residual value void; or a limitation that only allows the value of the credits or vouchers to apply to the base fare of a new booking. A ticket agent must clearly disclose any material restrictions, limitations, or conditions on the use of the credits and vouchers, including but not limited to administrative fees for redemption, advance purchase or capacity restrictions, and blackout dates.

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Vol. 87, No. 161

Monday, August 22, 2022

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FEDERAL REGISTER PAGES AND DATE, AUGUST

46883–47092	1
47093–47330	2
47331–47620	3
47621–47920	4
47921–48078	5
48079–48430	8
48431–48600	9
48601–49504	10
49505–49766	11
49767–49974	12
49975–50234	15
50235–50552	16
50553–50762	17
50763–50924	18
50925–51236	19
51237–51582	22

CFR PARTS AFFECTED DURING AUGUST

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:
10428 48601
Executive Orders:
14079 49505
Administrative Orders:
Memorandums:
Memorandum of August 1, 2022 48599
Memorandum of August 8, 2022 51231
Memorandum of August 9, 2022 50233
Memorandum of August 12, 2022 51233
Notices:
Notice of August 4, 2022 48077
Presidential Determinations:
No. 2022–20 of August 12, 2022 51235

6 CFR

126 48431

7 CFR

210 47331
215 47331
220 47331
226 47331
932 50763
Proposed Rules:
51 48091
205 48562
981 51270
983 51006
3555 47646

8 CFR

Proposed Rules:
274a 50786

9 CFR

317 50553
381 50553
Proposed Rules:
201 48091

10 CFR

429 50396
430 ..... 50396, 51199, 51492
707 49975
Proposed Rules:
30 47947
70 47947
431 49537
626 47652

12 CFR

Ch. X 50556
201 48441
204 48442
338 ..... 48079, 49767
343 ..... 48079, 49767
Proposed Rules:
1282 50794

13 CFR

115 48080
120 46883
125 50925
129 50925

14 CFR

25 ..... 47332, 48084
39 ..... 47093, 47334, 47337, 49509, 49515, 50235, 50560
71 ..... 47097, 47098, 47342, 49519, 49767, 49768, 49769, 49979, 50237, 50239, 50563, 50565, 50566, 50928, 51237, 51238, 51239, 51241, 51242, 51243, 51245, 51246, 51248
89 49520
93 47921
97 ..... 48086, 48087
Proposed Rules:
25 46892
39 ..... 46903, 46906, 47141, 47144, 49554, 49556, 49773, 49776, 49779, 50005, 50009, 50588, 51271
71 ..... 47146, 47149, 47150, 49781, 49783, 50011, 50015, 50018, 50019, 50021, 50023, 50590, 50592
121 46892
259 51550
260 51550
399 51550
1212 46908

15 CFR

772 49979
774 49979

16 CFR

1228 50929
Proposed Rules:
Ch. I 47947, 51273

17 CFR

Proposed Rules:
Ch. I 48092
39 49559
240 49930

18 CFR

Proposed Rules:
1d 49784
35 48118

19 CFR

4.....50934

21 CFR

118.....49521
573.....47343
800.....50568, 50598
801.....50568, 50598
808.....50568, 50598
874.....50568, 50598
1141.....50765

22 CFR

135.....48444

23 CFR

655.....47921

25 CFR

Proposed Rules:
502.....48613
556.....48613
558.....48613
585.....48615

26 CFR

1.....47931
301.....50240

27 CFR

9.....49986
478.....51249
479.....51249

29 CFR

1956.....50766

Proposed Rules:
1910.....50803
1926.....50803
1952.....50025
2570.....51299

31 CFR

285.....50246
542.....47932
560.....47932
587 .....47344, 47347, 47348, 50570
589.....47621
591.....47932, 50572
594.....47932

32 CFR

199.....46884

33 CFR

3.....48444
100 .....47348, 49522, 49990, 49991, 50250, 50252, 51250
117.....49991
165 .....46887, 47350, 47352, 47624, 47626, 47935, 47937, 47938, 48444, 49523, 49993, 49994, 49997, 50252, 50253, 50255, 50776, 50935, 51251, 51253, 51257
334.....46888

Proposed Rules:
117.....49793, 50276
165 .....47381, 47659, 47661, 47949, 48125, 49568, 50278

34 CFR

Ch. II.....50937

Proposed Rules:
Ch. II.....47152, 47159,

36 CFR

2.....47296

38 CFR

17.....47099
38.....50574

Proposed Rules:
61.....46909

39 CFR

Proposed Rules:
3030.....50027
3050.....48127

40 CFR

52 .....46890, 47101, 47354, 47630, 47632, 49524, 49526, 49528, 49530, 49997, 50257, 50260, 50261, 50263, 50267, 50778, 50945, 51259, 51262, 51265
60.....48603, 50952
62.....50269
63.....48603
81 .....49997, 51262, 51265
141.....50575
171.....50953
180.....47634
300.....50584
372.....47102
721.....47103
723.....47103

Proposed Rules:
52 .....46916, 47663, 47666, 49570, 50028, 50030, 50280, 50593, 50594, 51006, 51016, 51041, 51300
60.....49795
63.....49795, 49796
81.....50030
180.....47167
300.....50596
372.....48128

42 CFR

410.....48609
412.....47038, 48780
413.....47502, 48780
414.....48609
482.....48780
483.....47502
485.....48780
495.....48780

Proposed Rules:
Ch. IV.....46918
433.....51303
437.....51303
438.....47824
440.....47824
457.....51303
460.....47824

43 CFR

49.....47296
8360.....47296

Proposed Rules:
8360.....47669

44 CFR

206.....47359

45 CFR

1330.....50000

Proposed Rules:
80.....47824
84.....47824
86.....47824
91.....47824
92.....47824
147.....47824
155.....47824
156.....47824

47 CFR

64.....47103, 51267
73.....49769
76.....51267
95.....49771

Proposed Rules:
51.....47673
61.....47673
69.....47673

48 CFR

Ch. 1.....49502, 49503
4.....49502
13.....49502
17.....49502
23.....49502
51.....49502
52.....49502
Ch. 28.....47116

Proposed Rules:
1.....51044
7.....51044
22.....51044
36.....51044
52.....51044

49 CFR

173.....50271
1249.....47637

Proposed Rules:
40.....47951
385.....48141
391.....50282

50 CFR

20.....50965
27.....47296
300 .....47939, 47944, 48447
622.....48610
635.....49532
648 .....47644, 48447, 48449, 50273
660.....49534
679 .....48449, 48611, 50274, 51004

Proposed Rules:
17.....50804
18.....50041
218.....49656
224.....46921
648 .....47177, 47181, 48617, 49573, 49796
660.....50824

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 19, 2022

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